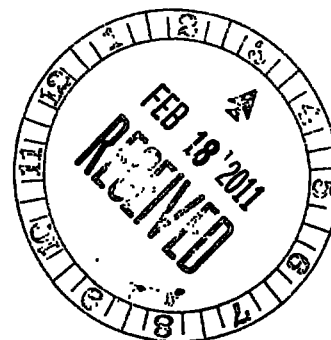


228861

February 18, 2011

*via hand delivery*

Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20423



**RE: Docket No. NOR 42123; M&G Polymers USA, LLC. v. CSX Transportation, Inc.**

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding please find the original and ten (10) copies of the Public version of the Reply of M&G Polymers USA, LLC in Opposition to Motion for Expedited Determination of Jurisdiction Over Challenged Rates ("Reply").

An electronic PDF copy of the Public version of the Reply can be found on the three CDs that are also enclosed.

An additional paper copy of the Reply is included for date-stamping and return. Please date-stamp the extra copy for return delivery to the undersigned via our messenger.

Please do not hesitate to contact the undersigned if you have any questions.

Sincerely,

Jeffrey O. Moreno  
David E. Benz  
*Counsel for M&G Polymers USA, LLC*

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**M & G POLYMERS USA, LLC**

**Complainant,**

**v.**

**CSX TRANSPORTATION, INC.**

**Defendant.**

**Docket No. NOR 42123**

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February 18, 2011

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**PUBLIC VERSION**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**M & G POLYMERS USA, LLC**

**Complainant,**

**v.**

**CSX TRANSPORTATION, INC.**

**Defendant.**

---

**Docket No. NOR 42123**

**REPLY OF M&G POLYMERS USA, LLC  
IN OPPOSITION TO MOTION FOR EXPEDITED DETERMINATION OF  
JURISDICTION OVER CHALLENGED RATES**

M & G Polymers USA, LLC (“M&G”) hereby replies in opposition to the “Motion for Expedited Determination of Jurisdiction Over Challenged Rates” (“Motion”), filed by CSX Transportation, Inc. (“CSXT”) on January 27, 2011. By asking the Board to determine market dominance in this proceeding before it considers rate reasonableness, CSXT’s Motion constitutes an improper collateral attack on the procedural schedule. The Board does not typically separate the market dominance and rate reasonableness phases of a rate case unless “the evidence submitted by the defendant rail carrier raise[s] considerable doubts as to the complainants’ ability to demonstrate market dominance.” Gov’t of the Territory of Guam v. Sea-Land Service, Inc. et al., STB Docket No. WCC-101, slip op at 6 (served Feb. 2, 2007) (“Guam”). As M&G demonstrates in this Reply, CSXT has not met this standard and there is no basis in law or fact for granting CSXT’s Motion.

M&G does not attempt to present its entire market dominance evidence in this Reply both because it could not do so in the brief time provided by the Board’s rules for responding to

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CSXT's Motion, and more importantly, because it is not required to do so under the current procedural schedule absent a specific Board order. Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, Ex Parte No. 527, 1 STB 754, 760, n. 10 (1996) ("Expedited Procedures"). Nevertheless, M&G presents ample evidence that CSXT's Motion rests upon assumptions which are unsupported, facts which are ignored, and misleading half-truths which are presented as facts. In short, CSXT is utterly incorrect in its claim that "compelling evidence" shows effective competition in 32 of the 70 lanes at issue in this case. Motion at 2. Because market dominance is not the "open and shut" case that CSXT contends, CSXT has not carried its burden to demonstrate that the Board should deviate from its procedural schedule in this case by raising "considerable doubts" upon M&G's ability to demonstrate market dominance. Guam, slip op at 6.

M&G's Reply is presented in seven parts. Part I presents the legal standard for bifurcating market dominance from rate reasonableness evidence, and explains why the Board should deny CSXT's Motion as both procedurally improper and fundamentally unfair to M&G. Part II provides an overview of M&G's operations in order to paint a clear picture of what transportation options are, or are not, feasible. Part III responds directly to two fundamental propositions in CSXT's Motion that, if CSXT fails to prove, are dispositive of its Motion. Parts IV and V respond separately to four different alternative transportation options that CSXT claims provide "effective competition" for various subsets of the 32 lanes that are the subject of CSXT's Motion. Part VI responds to CSXT's claim that M&G's captivity at Apple Grove is self-imposed. Part VII summarizes why the Board should deny CSXT's Motion. M&G's Reply is supported by the Verified Statement of Andre Meyer, who is M&G's Americas Supply Chain Manager ("Meyer V.S."), the Joint Verified Statement of Philip H. Burris and Sean D. Nolan of

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L.E. Peabody & Associates, Inc. (“Burris/Nolan V.S.”), and multiple exhibits that accompany each Verified Statement.

**I. CSXT HAS FAILED TO MEET THE BIFURCATION STANDARD.**

In seeking “expedited determination of jurisdiction” over the challenged rates, CSXT is requesting that the Board bifurcate the market dominance and rate reasonableness portions of this proceeding. Nowhere in its Motion, however, does CSXT state the applicable standard for bifurcation requests. While CSXT makes some attempt to address market dominance precedent in its Motion, CSXT is completely silent on the issue of the standard that should apply to a request to bifurcate a proceeding. As the moving party, CSXT has the burden of proof. Given CSXT’s failure to even mention the standard, it should not be surprising that CSXT does not justify any deviation from the Board’s precedent holding that market dominance should be decided contemporaneous with rate reasonableness.

Nearly fifteen years ago, the Board decided that market dominance should not be bifurcated from rate reasonableness evidence. In the Interstate Commerce Commission Termination Act (“ICCTA”), Congress directed the newly-created STB to establish procedures to expedite rail rate challenges. 49 U.S.C. 10704(d). In response to this directive, the Board proposed to no longer bifurcate market dominance and rate reasonableness determinations:

The number and timing of evidentiary filings can also greatly affect the length of a rate reasonableness proceeding. For example, in a rate case we can proceed with the market dominance and rate reasonableness phases sequentially or simultaneously. In some cases in the past, the ICC conducted the two phases of the case sequentially; only if it found market dominance did the ICC schedule the filing of rate reasonableness evidence. More recently, the ICC provided for the market dominance and rate reasonableness evidence to be filed simultaneously. The sequential procedure can extend the time needed to close the record, but has the advantage of sparing the parties the expense associated with presenting evidence on the reasonableness of a rate in cases where the carrier is found not to possess market



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dominance. The simultaneous procedure allows faster completion of the record, but always requires the parties to incur the expense of filing evidence on the reasonableness of a rate.

61 FR at 11801. After carefully balancing these competing considerations, the Board ultimately adopted a procedural schedule with simultaneous filing of market dominance and rate reasonableness evidence that it declared “will not be altered absent a specific Board order.”

Expedited Procedures for Processing Rail Rate Reasonableness, Exemption, and Revocation Proceedings, 1 STB 754, 760, n. 10 (1996).

For car load shippers, such as M&G, the length and cost of SAC cases is a greater deterrent to pursuing regulatory rate relief than it is for unit train coal shippers, which historically have been the only shippers able to economically justify the time and expense of a rate case. Unlike unit train coal shippers, which tender a single commodity in enormous volumes between the same two points year after year, M&G has hundreds of customers which are constantly changing and which order product in volumes ranging from a handful of rail cars to hundreds of rail cars annually. With its Motion, CSXT attempts to make the SAC process even more difficult for M&G by (1) requiring M&G to prepare its market dominance evidence in a matter of weeks; and (2) potentially forcing M&G to develop its SAC evidence based on a separate market dominance decision by the Board in an extremely condensed timeframe. Alternatively, in order to avoid these consequences to M&G, CSXT would have the Board extend the procedural schedule by several additional months, which could extend this case beyond three years.

These added costs and complexities, in conjunction with the possible delay, would further deter carload shippers from pursuing regulatory remedies for unlawful rates. Thus, the Board’s reasons for expediting rate cases by requiring the simultaneous filing of market dominance and rate reasonableness evidence are even more justified in this case than they were for the coal cases

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that dominated the Board's rate case docket in 1996, when the Board decided that a simultaneous procedural schedule was in the public interest.

CSXT asserts that the most "prudent and efficient course of action" is for the Board to first reach a decision on market dominance before the parties file SAC evidence, but this assertion rings hollow. Motion at 3. A large portion of the major work in a SAC case comes in the discovery phase, which ended pursuant to the procedural schedule over two months ago. Furthermore, if the procedural schedule is bifurcated, M&G cannot simply stop working on its SAC evidence until the Board issues a market dominance decision. The unopposed procedural schedule requested by M&G in a January 10, 2011 "Motion to Modify Procedural Schedule" requires that M&G file its opening evidence approximately four months from now, on June 29, 2011.<sup>1</sup> Yet, CSXT contemplates that the Board would receive bifurcated market dominance evidence and issue a decision without altering that due date. Motion at 4. M&G requested an extension of the due date for opening evidence from April 15 until June 29 precisely because M&G needs *all* of that time to adequately prepare its SAC evidence. Therefore, M&G simply cannot afford to stop preparing its rate reasonableness evidence while the Board determines market dominance.<sup>2</sup>

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<sup>1</sup> Although M&G's Motion is unopposed, the Board has not yet issued a decision.

<sup>2</sup> In addition, as noted in M&G's unopposed Motion to Modify Procedural Schedule, at pp. 1-2, because the parties in Docket Nos. 42121, 42123 and 42125 are represented by the same counsel and consultants, they have carefully coordinated their proposed procedural schedules "in order to minimize timing and resource conflicts; to provide the parties and the Board with adequate time to develop, present, and evaluate the evidence; and to produce timely decisions in these cases." CSXT's proposal for a bifurcated procedural schedule utterly destroys that balance because it would require M&G to submit rebuttal market dominance evidence in this proceeding on May 2nd, which is just three days after M&G's counsel must submit opening evidence in Docket No. 42121. Because this fact clearly was known by CSXT's counsel when it agreed to the proposed procedural schedules in all three dockets in early January, this was classic "sandbagging."

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Meanwhile, CSXT would be completely unaffected by its own proposal. Unlike M&G, CSXT still will have four months to prepare its reply SAC evidence, without any concern that during this time it may have to change its evidence at the last minute. The principal beneficiary of CSXT's proposed plan is CSXT itself.

CSXT has not demonstrated good reason to alter the careful balancing of interests that the Board performed when it decided not to bifurcate the market dominance and rate reasonableness determinations in SAC cases. Indeed, CSXT's Motion would gravely distort that balance by causing M&G to suffer far greater harm either by prejudicially reducing its time to prepare market dominance and SAC evidence or unduly extending the procedural schedule to accommodate a bifurcated proceeding, during which M&G must continue to pay CSXT's excessive tariff rates.

## **II. OVERVIEW OF M&G OPERATIONS.**

In this section, M&G provides a description of its operations, the products it produces, its facility in Apple Grove, West Virginia, and key factors that govern M&G's transportation options. This background is essential to understanding the scope of CSXT's market dominance over the issue traffic.

### **A. Product And Customer Overview.**

M&G produces polyethylene terephthalate ("PET") in North America at facilities in Apple Grove, West Virginia and Altamira, Mexico. Meyer V.S. at ¶ 4. PET is a plastic pellet substance that is widely used by M&G's customers in many consumer and industrial applications such as plastic bottles, food packaging, and carpet fiber. Id. Manufacture of PET depends on two major raw materials, purified terephthalic acid ("PTA") and monoethylene glycol ("MEG"),

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and numerous minor raw materials. Id. M&G currently produces { [REDACTED] }<sup>3</sup> grades of PET at Apple Grove. Id. Each grade adheres to distinct specifications required by M&G's customers, and thus may not be substituted for another grade. Id.

M&G's customers include a wide variety of businesses that utilize PET in the manufacture of finished products. Id. at ¶ 5. While these customers are located across the United States, M&G supplies most customers in the Eastern U.S. from Apple Grove, and in the Western U.S. from Altamira. Id. The PET business in the United States is highly competitive, with domestic and international producers all vying for the same customers, and it is not at all unusual for a customer to switch its primary supplier every few years. Id. at ¶ 6. Product quality and cost are the two most important competitive factors. Id.

When ordering PET, the customer, not M&G, specifies the transportation mode. Id. at ¶ 25. Some may do so in their contracts with M&G on a blanket basis; others may do so on a shipment-by-shipment basis. Id. The customer does not always explain why it prefers one mode over the other. Id. Most customers that have rail access regularly specify rail transportation. Id. M&G makes every attempt to accommodate customer requests, because to do otherwise would constitute poor customer service and could result in the customer switching to a competing PET producer that can meet the customer's requirements. Id.

**B. The Apple Grove Facility.**

M&G's Apple Grove facility is the origin point for 25 of the 32 lanes covered by CSXT's Motion, and the destination for another 2 lanes. Therefore, an accurate understanding of its operations is essential to making an informed decision on CSXT's Motion.

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<sup>3</sup> Pursuant to the Protective Order in this proceeding, M&G has delineated "CONFIDENTIAL" information by single brackets {...}, and "HIGHLY CONFIDENTIAL" information by double brackets {...}.

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The Apple Grove facility is located in a rural mountainous area approximately 30 miles northeast of Huntington, WV, and 40 miles northwest of Charleston, WV. Apple Grove is located on a 2-lane road known as Huntington Road or State Route 2. The nearest interstate highway is approximately 25 miles away.

The Apple Grove facility was designed around rail operations. Meyer V.S. at ¶ 7. Indeed, the CSXT mainline cuts straight through the middle of the plant. The plant was not constructed all at once, but rather in a patchwork of expansions by different owners over the past 50 years. Id. Because the plant is located in the mountains of West Virginia, rail is a more efficient and reliable form of transportation than trucks, which frequently must travel lengthy distances just to reach the plant and are more susceptible to adverse weather conditions in the mountains. Id. at ¶ 8.

Apple Grove receives raw materials via rail, truck, and barge. Id. at ¶ 9. PTA arrives at the plant via rail and MEG via river barge. Id. All minor raw materials are delivered in package trucks except Purified Isophthalic acid (“PIA”) and Diethylene Glycol (“DEG”), which arrive via rail. Id. These raw materials are received, handled, and stored at Apple Grove for PET production in one of Apple Grove’s two production units. Id.

The capacity of the two production units at Apple Grove is { [REDACTED] } [REDACTED] } Because there are only two production units at Apple Grove, M&G can manufacture only { [REDACTED] } of PET at any one time.<sup>4</sup> Id. Production of each grade occurs in campaigns { [REDACTED] } Therefore, each campaign must produce a sufficient inventory of each PET grade to meet customer demand until the next production run. Id.

---

<sup>4</sup> There is a scenario where M&G can produce { [REDACTED] } grades simultaneously, but only in a specific combination of certain grades. Meyer V.S. at ¶ 10.

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{ [REDACTED]  
[REDACTED] } The production plan is adjusted during the month according to the actual orders, inventory in hand, and production issues. Id.

Production planning is complicated, however, by the irregular and often unpredictable nature of PET demand. Id. { [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] } This unpredictability, along with the ability to only manufacture two of the nine PET grades at any one time, requires M&G to maintain an average {{ [REDACTED]  
[REDACTED] }} . Id. at ¶ 12.

{ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] } {{ [REDACTED] , [REDACTED] , [REDACTED] }} { [REDACTED]  
[REDACTED]  
[REDACTED] }

Apple Grove has storage tracks on both sides of the CSXT mainline sufficient to hold {{ [REDACTED] }} on the east side and {{ [REDACTED] }} on the west side under gridlock conditions. Id. at ¶ 15. However, only {{ [REDACTED] }} of these car spots on each side are useable at any one time in order to ensure access to all the tracks, transload roads, { [REDACTED]  
[REDACTED] } and outbound empties, so that fluid switching and railcar movement can occur, and yard operations are conducted safely. Id. { [REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED] } { [REDACTED]

[REDACTED] }} Any movement from one side to the other (of the CSXT mainline) must be executed by CSXT crews with their own power. Id.

{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }

Vehicular traffic from one side of the CSXT mainline to the other is sometimes prevented due to CSXT switching activity or the presence of a CSXT train passing or stopped on the mainline. Id. at ¶ 18. Other than crossing the CSXT mainline, there is no other way for trucks or vehicles to access the west side of the Apple Grove plant from State Route 2 (Huntington Road). Id. Therefore, the only way for bulk trucks to access tracks 66-06 and 66-16 for transloading is by crossing over the CSXT mainline. Id.

**C. Other Non-Customer Locations That Are Origins And/Or Destinations For The Issue Lanes.**

Although Apple Grove is the origin for most of the 32 lanes covered by CSXT's Motion, several lanes originate and/or terminate at other facilities owned or leased by M&G. A brief description of these facilities is given below.

**1. Altamira, Mexico**

Altamira is the location of M&G's other PET production facility in North America. Id. at ¶ 19. Altamira produces most of the PET that M&G sells to customer locations in Mexico and the western U.S., and for export shipments. Id. { [REDACTED]

[REDACTED]

[REDACTED] }

**2. Belpre, OH**

Belpre is a CSXT-served railcar storage and transload facility leased and operated by Bulkmatic Transport. Id. at ¶ 20. { [REDACTED]

[REDACTED]

[REDACTED] }

**3. Parkersburg, WV**

Parkersburg is a CSXT rail yard. M&G leases track from CSXT with the capacity to hold 25 railcars. Id. at ¶ 21. M&G uses Parkersburg solely for storage of empty and loaded railcars when there is insufficient storage capacity at Apple Grove. Id. M&G does not transload into trucks at Parkersburg, and does not even know if CSXT would permit transloading. Id. In any event, conditions on the leased tracks at Parkersburg do not allow M&G to transload safely and without quality risks. Id.

**4. Sweetwater, TX**

Sweetwater is a railcar storage in transit (“SIT”) and transload facility owned, operated, and served by the BNSF Railway Company (“BNSF”). Id. at ¶ 22. M&G uses this facility for storage of both empty and loaded railcars. Id. Loaded railcars are stored until the PET is needed to supply a customer, at which time the railcar is tendered to BNSF or placed on the transload track for transloading to a bulk truck. Id. {{ [REDACTED]

[REDACTED] }}



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5. Aguila, AZ

{

[REDACTED]

[REDACTED] }

6. Vado, NM

Vado is a SIT facility on BNSF used primarily for shipments from Altamira. Id. at ¶ 24.

No transloading occurs at Vado. Id.

**III. THE TWO FUNDAMENTAL PROPOSITIONS THAT UNDERLIE CSXT'S MOTION ARE FATALLY FLAWED.**

There are two fundamental propositions at the heart of CSXT's Motion, and if either fails, so must CSXT's Motion. First, the Board must accept CSXT's proposition that M&G can substantially increase Apple Grove's ability to load trucks with a minimal infrastructure investment of just \$200,000. Motion at 14-18. If M&G is not able to significantly increase its capacity to load trucks at Apple Grove for this minimal investment, then CSXT cannot demonstrate that M&G has an alternative transportation option at a similar cost to the challenged rates. Second, the Board must accept CSXT's proposition that similar rate levels for CSXT's transportation service and various direct-truck and/or truck-to-rail transload alternatives mean that those alternatives effectively constrain CSXT's rates to reasonable levels. If CSXT is merely exercising its market dominant position to set rates at a level similar to much higher cost alternatives, such alternatives are not effective competitive constraints. Because neither of these fundamental propositions is factually or legally sustainable, the Board should deny CSXT's Motion.

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**A. CSXT's Proposal To Increase Truck Loadings At Apple Grove Is Woefully Inadequate.**

CSXT's Motion depends almost entirely upon a single argument that, if unproven, causes the entire Motion to fail. The Motion focuses upon 32 case lanes, of which 25 originate at Apple Grove. For each of these lanes, CSXT contends that M&G can originate the traffic by truck at Apple Grove. Because Apple Grove has substantial constraints upon its ability to load trucks, the fundamental premise of CSXT's Motion is its argument that M&G can easily and cost-effectively load significantly more trucks at Apple Grove than it already currently loads. CSXT's plan for loading more trucks at Apple Grove, however, is woefully inadequate and utterly fails to consider all of the obstacles that M&G faces. Consequently, trucks are not an effective competitive alternative to CSXT's rail transportation service for at least 25 of the 32 lanes covered by the Motion.

Because Apple Grove was designed and built around rail service, { [REDACTED]  
[REDACTED]  
[REDACTED] } The truck loading capacity of this operation at Apple Grove is almost entirely used to ship PET to customers without access to rail service, customers that order less than rail car quantities of PET, and for occasional emergency or expedited shipments to rail-served customers. Id. at ¶ 26. Therefore, if M&G were to shift significant rail volumes to truck, it would displace these volumes for which rail is not an option, thus reducing the volume of PET that M&G could sell well below the production capacity of Apple Grove. Id. M&G has estimated that the cost of reconfiguring Apple Grove to load trucks directly would be {{ [REDACTED] }} Id. at

¶ 14. See also, Heisler Exs. 8 (M&G responses to Interrogatory Nos. 33 and 34) and 9 (M&G responses to Interrogatory No. 42).

In its Motion, CSXT does not challenge any of these facts. Heisler V.S. at 6, n. 4. Rather, CSXT Witness Heisler advocates that M&G can and should expand Apple Grove's current rail-to-truck transloading capacity. *Id.* at 14-20. For an investment in lighting of just \$200,000 in order to load trucks 24 hours per day and 7 days per week, Mr. Heisler contends that M&G would have sufficient capacity to convert 100% of the PET volumes covered by CSXT's Motion to truck transportation.<sup>5</sup> Motion at 9; Heisler V.S. at 15, 17.

This proposition sounds too simple and obvious to be true, because it is. If that small investment were all that was necessary to competitively constrain CSXT's rates, M&G would have jumped at that opportunity years ago rather than spend millions of dollars to bring a rate case with an uncertain outcome. As detailed below, the problems with Mr. Heisler's plan are both numerous and extensive.

**1. CSXT grossly overstates Apple Grove's current truck loading capacity.**

A fundamental predicate to Mr. Heisler's claim that his proposals would increase M&G's truck loading capacity enough to handle 100% of the rail volumes in 25 of the 32 lanes covered by CSXT's Motion is that Apple Grove's current loading capacity is {{ ■ }} bulk trucks per day. Motion at 9; Heisler V.S. at 15-17. Only by doubling his {{ ■ }} truck estimate of Apple Grove's current truck loading capacity can Mr. Heisler come close to showing that his proposal, if feasible (which it is not for reasons stated elsewhere), can handle significant shifts of current

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<sup>5</sup> For an additional \$1.3 million, CSXT claims that M&G can load an additional 21,000 trucks per year at Apple Grove. Heisler V.S. at 17-18. Aside from the much higher capital cost associated with that investment, the same facts discussed herein that render the \$200,000 investment inadequate also apply to the \$1.3 million investment.

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rail volumes to truck. But this does not come anywhere close to Apple Grove's actual experience.

{ [REDACTED] }  
[REDACTED] } {{ [REDACTED] }}. { [REDACTED] }  
[REDACTED] } {{ [REDACTED] }}. { [REDACTED] }  
[REDACTED]  
[REDACTED]  
[REDACTED] } It is preposterous to think that Mr. Heisler, based on a review of Apple Grove schematics and a single one-day field trip to Apple Grove, could devise such a simple plan that M&G personnel with intimate knowledge of Apple Grove's operations overlooked.

Based upon Apple Grove's actual experience, a doubling of current truck loading capacity, as proposed by Mr. Heisler, would allow Apple Grove to load approximately {{ [REDACTED] }} trucks per day. *Id.* at ¶ \_\_\_\_\_. This is {{ [REDACTED] }} less than Mr. Heisler's estimate of {{ [REDACTED] }} trucks. Therefore, assuming that Mr. Heisler's proposal could work (which it cannot), the truck load capacity gain at Apple Grove would be far too low to constrain CSXT's rates.

Finally, even if Mr. Heisler could demonstrate that certain low volume case lanes could be loaded into trucks at Apple Grove, it would not be appropriate for the Board to determine market dominance for each lane in isolation from the others. For example, assume that there are ten case lanes with fewer than five rail cars per year in each lane, and that there is sufficient bulk truck loading and motor carrier capacity to absorb a total of five cars annually. An isolated market dominance analysis of each lane would conclude that there is sufficient capacity to handle the volume in each lane. But on an aggregate basis, there truly is only sufficient capacity

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to shift one lane to truck, while the other nine remain captive to rail. Therefore, a finding of market dominance for all ten case lanes would be appropriate.

**2. CSXT's transload capacity expansion proposal for Apple Grove fails to consider Apple Grove's rail car storage capacity and rail switching operations.**

CSXT's plan for increasing Apple Grove's truck loading capacity does not address where all the loaded and empty rail cars will be stored. This issue is further complicated by the fact that CSXT's mainline splits the Apple Grove facility in half, { [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] }

The Apple Grove rail yard must handle a variety of traffic. { [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] } Because Apple Grove can generally only produce { [REDACTED]

[REDACTED] } { [REDACTED] } { [REDACTED]  
[REDACTED] } M&G also receives large quantities of the raw material, PTA, by rail on a daily basis (6 times per week), and maintains an inventory of { [REDACTED] } in the Apple Grove yard to ensure uninterrupted operations. Id. at ¶ 28. { [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] } Mr. Heisler has not considered how his proposed transload

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operation would affect, or be affected by, these other functions that also must occur in the Apple Grove rail yard.

M&G produces { [REDACTED] } PET in two production units at Apple Grove, known as “CP-3” and “CP-4.” { [REDACTED]

[REDACTED] } This mis-match of production capacity and rail car storage capacity wreaks havoc with Mr. Heisler’s proposal to load more trucks at Apple Grove.

Because the CSXT mainline divides the Apple Grove yard there must be sufficient capacity on each side to store empty cars for loading, maintain an average {{ [REDACTED] }} { [REDACTED] }, and preserve the existing transload track capacity. Id. at ¶ 32-33. Although rail cars can be switched across the CSXT mainline, CSXT must provide that service, which is at its convenience and for an additional cost. This would allow CSXT to reassert its market dominance in spite of Mr. Heisler’s plan; it injects an operating restriction not addressed by Mr. Heisler; and it adds a cost not considered by Mr. Heisler. Moreover, even if those problems could be overcome, the total aggregate yard capacity at Apple Grove also is inadequate.

The tracks on the west side of the plant, the No. 66 tracks, that serve the higher production capacity CP-3 unit, have a gridlock capacity of {{ [REDACTED] }}. Id. at ¶ 32. In order

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to maintain a fluid and functioning yard, however, the true operating capacity is {{ [REDACTED] }} cars. Id. The CP-3 unit requires {{ [REDACTED] }} spaces for empty cars in order to maintain a regular flow of empty cars for loading during a production campaign that averages {{ [REDACTED] }} car loadings per day. Id. In addition, {{ [REDACTED] }} spots on two tracks must be kept open for transloading. Id. Finally, {{ [REDACTED] }} car spots are needed to maintain the inventory of the PET grades not currently in production. Id. In other words, the No. 66 tracks are approximately {{ [REDACTED] }} car spots short of the number required to successfully implement Mr. Heisler's proposal.

The tracks on the east side of the plant, the No. 55 tracks, that serve the CP-4 unit fare only slightly better. They have a gridlock capacity of {{ [REDACTED] }}. Id. at ¶ 33. In order to maintain a fluid and functioning yard, however, the true operating capacity is approximately {{ [REDACTED] }} cars. Id. PTA rail cars occupy {{ [REDACTED] }} car spots. Id. Approximately {{ [REDACTED] }} empties are needed to ensure a continuous flow of empty cars for loading during a production campaign that loads {{ [REDACTED] }} cars per day.<sup>6</sup> Id. In addition {{ [REDACTED] }} on two tracks must be kept open for transloading. Id. at ¶ 34. Inventory for the PET grades not in production requires approximately {{ [REDACTED] }} car spots. Id. { [REDACTED]

[REDACTED]

[REDACTED] }

An additional complication on the east side is the CSXT daily switch, which occurs on Track No. 55-1. Id. at ¶ 35. { [REDACTED]

[REDACTED]

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<sup>6</sup> { [REDACTED] } CP-4 requires more empty cars for loading because M&G uses dedicated fleets for some of its specialty PET production. Meyer V.S. at ¶ 33.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. } These disruptions in M&G's switching operations are not factored into Mr. Heisler's truck loading plan.

{ [REDACTED]

[REDACTED]

[REDACTED] } In addition, loaded rail cars in-transit serve as a form of inventory storage, which Mr. Heisler's plan would reduce if not eliminate. Id. This means that, even under CSXT's proposal, M&G must ship rail cars to and from off-site storage locations via CSXT. Therefore, it is unclear how Mr. Heisler can expect M&G to shift a significant portion of its rail volume at Apple Grove to trucks.

In order for Mr. Heisler's plan to be a competitive constraint on CSXT's rates under a scenario that still requires off-site storage of loaded rail cars, M&G would have to send only the rail cars to be shipped over lanes in which CSXT is market dominant to the off-site storage locations.<sup>7</sup> But, M&G does not know a rail car's ultimate destination when it loads the car. Id. at ¶ 37. Moreover, the variable and unpredictable nature of PET demand makes any attempt by M&G to predict a car's ultimate destination mostly guesswork. Id. The only way around this

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<sup>7</sup> Presumably, those would be the lanes that are not covered by CSXT's Motion; but CSXT apparently is not conceding market dominance over those lanes despite omitting them from its Motion. See Motion at 2-3.



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problem is to keep extra inventory at both Apple Grove and off-site storage locations. But of course, this increases M&G's costs and adds to the Apple Grove yard congestion, which would defeat Mr. Heisler's objectives.

Moreover, these facts render illusory the savings that Mr. Heisler contends that M&G could achieve by eliminating storage through the increased loading of trucks at Apple Grove. See Heisler V.S. at 19-20. Mr. Heisler's proposed savings in rail fleet costs also does not withstand scrutiny. Although M&G would be trucking from Apple Grove to bulk terminals for transfer to rail cars, M&G would still need a rail car { [REDACTED] } another rail car to receive the same PET at the bulk terminal for subsequent rail transportation. Meyer V.S. at ¶ 40. Furthermore, M&G still would need to use the bulk terminals as off-site storage, before receiving actual customer orders, in order to keep the Apple Grove rail yard fluid. Id. This would add demurrage costs to Mr. Heisler's truck-rail cost estimates.

**3. CSXT's truck loading plan requires a carefully orchestrated ballet of rail car switching and truck loading.**

Mr. Heisler's plan for increasing Apple Grove's truck loading capacity assumes that the right cars can be positioned in the right spots for transloading at the right time, without any consideration of how that can be accomplished. This proposed operation would require carefully orchestrated timing of rail car switching and truck scheduling that is reminiscent of a ballet. Mr. Heisler's plan, however, leaps ahead to the grand finale without considering any of the back story.

**a. CSXT ignores the greatly expanded railcar switching required for increased bulk truck loading.**

The simplistic view of M&G operations included in the CSXT Motion glosses over or completely omits the complications caused by railcar switching and, in particular, the fact that

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truck shipments from Apple Grove involve more railcar switching than rail shipments. Because each switch creates a cascading series of complications, M&G tries to limit railcar switching as much as possible to the activities that are essential to the production of PET. Increased truck loading would dramatically increase switching, contrary to this objective.

The irregular nature of demand for M&G's products also greatly complicates the precise placement of railcars within the Apple Grove yard that would be needed to efficiently switch a substantially greater number of cars onto and off of the transload tracks at Apple Grove. Due to the irregularity of customer orders, however, M&G cannot precisely "stage" or plan where each unloaded and loaded railcar should be at all times. Meyer V.S. at ¶ 37.

As noted previously, M&G produces { [REDACTED] } PET at Apple Grove and it must maintain approximately { { [REDACTED] } } of inventory on average to meet demand as it arises. Mr. Heisler's plan requires M&G to store this inventory at Apple Grove and to switch rail cars to the transload tracks as needed. There is insufficient track capacity at Apple Grove to dedicate tracks to loaded cars of specific PET grades, which would make it easier to switch cars onto the transload tracks as needed. Meyer V.S. at ¶ 38. Consequently, M&G routinely would have to pull large blocks of cars from multiple storage tracks in order to access the ones that are needed on the transload tracks. Id. All of this switching to and from the transload tracks must be coordinated with the switching of cars to and from rail loading spots, the switching of raw material rail cars to and from unloading spots, and the daily inbound and outbound switching of loaded and empty cars with CSXT. Id.

A rail car also may need to be switched to the transload tracks multiple times before it is empty. Id. at ¶ 39. There are two reasons for this. First, because standard rail car capacity is slightly greater than the capacity of four trucks, the leftover amount, known as a "heel," must be

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loaded into a fifth truck. Id. This fifth truck will be light-loaded unless it can load an additional amount of PET from a second railcar; but this then creates an even larger “heel” in that rail car. Id. Second, there will be orders for less than full rail car quantities. Id. In both instances, the partially loaded rail car must be switched back to the storage tracks to await another customer order for that grade of PET, at which time the rail car must be switched back to a transload track. Id.

Mr. Heisler merely assumes all of these activities can be performed in harmony with the additional transload switching required by his plan, if he even considered those activities at all. There certainly is nothing in CSXT’s Motion to indicate that he gave these issues more than passing consideration.

**b. CSXT ignores the complications associated with scheduling large numbers of trucks for transloading.**

In addition, M&G would have to schedule trucks to unload rail cars on the transload tracks as close together as possible in order to keep pace with Mr. Heisler’s transload capacity plan. Meyer V.S. at ¶ 40. Otherwise, loading time is lost when pulling empty cars from the transload tracks and spotting loaded cars, and switching activity is inefficient when the cars on a transload track cannot be switched out as a single block of empties. Id. If a single truck misses its scheduling window, the entire ballet is thrown off.

Scheduling truck arrivals within a narrow window also will increase the truck rates beyond those used by Mr. Heisler to compare truck costs with rail costs. { [REDACTED]

[REDACTED] } Because Apple Grove is in a remote rural location, trucks must travel up to 200 miles to pick up a load of PET. Id. This flexibility improves the carrier’s ability to minimize empty miles by using a truck that is already in the general vicinity of Apple

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Grove. Id. In order to execute Mr. Heisler's plan, M&G would have to deprive carriers of this flexibility, which undoubtedly would increase M&G's truck rates.<sup>8</sup> Id.

Even if all the trucks arrive within their scheduled window, the imprecise nature of loading trucks by pneumatic vacuum to a proper weight still can throw off this delicate dance. Because PET is more dense than other polymers, such as polypropylene and polyethylene, bulk trucks reach their maximum load weight before the entire volume of the truck is full. Id. at ¶ 42. Therefore, the driver must use his best judgment as to when the truck has reached the maximum road limit weight limit. Id. However, because this is very imprecise, the exact weight of the truck is not known for certain until the truck is unhooked from the railcar, sealed, and drives to the truck scale. If the truck is overweight, it must return to the rail car to off-load product. Id. If the truck is underweight, it must return to the rail car to add more PET. See CSXT Motion, Exhibit 3 (M&G response to CSXT Second Set of Discovery Requests, Ex. 3). If this occurs even to just one truck, timing for the entire string of rail cars on the transload track is adversely affected.<sup>9</sup>

**c. Mr. Heisler uses unrealistically aggressive truck loading assumptions.**

Mr. Heisler claims that his plan conservatively assumes that only 50% of the transload car spots will be used for loading at any one time due to the need to space trucks, truck scheduling issues, and the need to switch empty rail cars. Heisler V.S. at 15. But he expects the Board to accept that his assumptions are conservative without even attempting to explain why. Nor does he attempt to explain which 50% of capacity would be in use at any one time or how

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<sup>8</sup> {{ [REDACTED]

}}

<sup>9</sup> Indeed, Mr. Heisler witnessed this very event during his December 16th visit to Apple Grove.

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that will function. For example, does 50% mean that only 2 of the 4 transload tracks will be in operation at one time; or will all of the tracks be in operation, but only half of the cars being transloaded; or will all of the tracks and car spots be in operation, but only half of the time?

Regardless which definition of “50%” he intended, there are problems with all of them.

If only 2 of the 4 tracks are in operation at a time, then every single car on those 2 tracks must be transloading simultaneously. Unless the trucks are loading perpendicular to the rail cars or on opposite sides, that is impossible. When a truck loads parallel to a rail car, it necessarily is blocking part of or access to the adjacent rail car, which means another truck cannot simultaneously be loading the adjacent car. Meyer V.S. at ¶ 43. Because the transload tracks at Apple Grove do not have space for perpendicular loading or loading from opposite sides of a rail car, it is impossible to load trucks from all of the rail cars on a single transload track simultaneously. Id.

If all of the transload tracks are in use but only half the time, the same loading problems exist. In order for Mr. Heisler’s 50% estimate to be accurate, then trucks must be loading from every car on those tracks at all times when those tracks are in use. Without perpendicular loading or loading from both sides of the railcars, that is impossible.

If all of the transload tracks are operating simultaneously, it might be possible to load trucks from half of the cars simultaneously via parallel loading. But then there is no time left for switching out empty cars and switching in loaded cars. Nor is there any buffer for truck scheduling issues.

Not only is Mr. Heisler’s 50% assumption *not* conservative, it is impossibly aggressive. A more realistic, although still by no means conservative, number might be 25%. Meyer V.S. at ¶ 43. That would allow for two tracks to be switched while loading the other two tracks, but

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recognizing that parallel loading only permits access to at most half the cars on those two tracks simultaneously. In other words, 50% of 50% is 25%. Id. Even this factor does not leave a buffer for truck scheduling issues.

**4. Mr. Heisler assumes unlimited bulk truck capacity and driver supply.**

Even if one accepts that Mr. Heisler's plan will increase M&G's truck loading capacity, he does not explain where M&G will find the trucks and drivers to transport the converted rail volumes. According to Mr. Heisler's own estimates, his plan could increase M&G's truck volumes by { [REDACTED] } trucks annually, or almost {{ [REDACTED] }}. Heisler V.S. at 15. He simply assumes such capacity exists and at current rates. Both of these assumptions are factually incorrect and do not match M&G's real-world experiences.

{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

•

}}

The truck capacity problem is not just about the trucks themselves. Indeed, it is also a driver shortage, as recognized across the country in the past year. ABC News recently published a story subtitled “Trucking Industry Expecting Huge Shortage of Drivers.” Brandi Kruse, Truckers Worried About the Long-Haul (Feb. 26, 2010). Meyer V.S., Ex. 3 (M&G-P-017116 to 017117). When the Council of Supply Chain Management Professionals issued its annual report regarding the state of the American logistics industry in June 2010, the Council predicted a shortage of 200,000 drivers nationwide by the end of 2011. Meyer V.S., Ex. 3 (M&G-P-017113), Shortage of Truck Drivers Predicted (June 9, 2010). The USA Today reported in September that “[s]hortages of trucks and drivers are delaying some deliveries of products and raw materials across the USA and raising freight costs.” Meyer V.S., Ex. 3 (M&G-P-017114 to 017115), Shortages of Trucks and Truck Drivers Stall Product Deliveries (Sept. 9, 2010).

Higher demand paired with lower supply typically means higher prices. Therefore, if M&G is to be able to attract the additional trucks and drivers needed to handle a {{ [REDACTED] }} surge in truck shipments, it is reasonable to expect that it must pay even higher rates than Mr. Heisler has estimated based upon M&G’s current truck volumes. Moreover, because of the remote location of Apple Grove, truckers are likely to demand even greater compensation due to a greater number of lengthy empty back hauls.

**5. CSXT Failed To Include All Costs Inherent In Increased Bulk Truck Loading At Apple Grove.**

A dramatic increase in bulk truck loading at Apple Grove would also entail numerous costs that M&G now avoids or is able to minimize at the current level of bulk truck loading.

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Meyer V.S. at ¶ 45. Mr. Heisler's analysis, however, omits a great many of those costs. The omitted costs fall into two broad categories: facility costs and personnel costs. Id. at ¶ 45.

Consequently, his comparison of the challenged rates with rates for direct trucking and truck-to-rail transloading understates the true cost of those alternatives.

**a. Additional facility costs.**

The only facilities included in Mr. Heisler's alternative transportation cost estimates are lighting for the transload tracks, an additional truck scale, and construction of two additional transload tracks.<sup>10</sup> But the substantially increased number of transloads that Mr. Heisler contemplates cannot be performed without a host of additional facilities.

First, Mr. Heisler makes no provision { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } This would only further congest the Apple Grove rail yard and

increase the problems addressed in Part II.A.2 and II.A.3. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>10</sup> Mr. Heisler's estimates for these items are understated because he fails to account for the fact that Apple Grove is a unionized facility that must use union labor for these construction projects. Meyer V.S. at ¶ 45 (note 1).



[REDACTED] } {{ [REDACTED] }} for equipment, labor

Second, existing road surfaces leading to the No. 66 transload tracks would have to be paved due to much higher truck volumes. West Virginia air regulation 45CSR7 requires facilities to control particulate emissions from all roads within their facilities. Although M&C has managed dust in the past by applying a dust suppressant, the {{ [REDACTED] }} increase in truck shipments contemplated by Mr. Heisler would require either expensive repeated applications throughout the year or paving the road with asphalt. *Id.* at ¶ 48.

Third, M&G would need to pour concrete pads in the transload areas in order to minimize dirt and rock contamination during the transload. At current truck volumes, M&G is able to lay mats when trucks are transloading. *Id.* at ¶ 49. But the continuous flow of truck traffic contemplated by Mr. Heisler would require concrete or asphalt aprons. In fact, many M&G customers require asphalt or concrete aprons for truck loading. *Id.* M&G has installed concrete and asphalt aprons at its Altamira production facility in response to those customer demands. *Id.*

Fourth, Mr. Heisler has omitted lighting in the rail yards. While he has included lighting around the transload tracks for 24 hour operation, he ignores the need for 24 hour operations in the rail yard in order to switch cars to and from the transload tracks. *Id.* at ¶ 50.

Fifth, due to substantially greater switching in the Apple Grove rail yard, M&G will need to acquire 1-2 additional switch engines, depending on whether an additional engine is needed for each side of the rail yard. *Id.* at ¶ 51. Otherwise, M&G will not be able to keep up with the

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switching of raw materials, empty cars to loading spots, loaded cars to the storage yard, and transload switching. Id. The estimated cost of two switch engines is {{ [REDACTED] }}. Id.

All of the above are real costs that Mr. Heisler either overlooks or ignores. Although M&G has not been able to quantify every one of those costs within the brief time frame to reply to CSXT's motion, those that it has quantified above would increase Mr. Heisler's \$200,000 cost estimate by many multiples. Id. at ¶ 53.

**b. Additional Personnel Costs.**

Mr. Heisler's proposal for 24 hour bulk truck loading would require M&G to incur substantially increased labor costs for which he fails to account. Id. at ¶ 52. These annual costs include {{ [REDACTED]

[REDACTED]

■ }}

**B. Similar Truck Rates Do Not Constrain CSXT's Rates to Reasonable Levels.**

A second fundamental predicate of CSXT's Motion is that similar truck and rail rates establish the truck alternatives as effective competitive constraints upon CSXT's rates. In 21 of the 32 lanes covered by CSXT's Motion, rail is still the lower priced alternative. However, in all but a handful of the 32 lanes, the difference between CSXT's tariff rate and the estimated truck-

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based alternative rate is within +/-5%.<sup>11</sup> CSXT asserts that this is "close enough to influence and constrain CSXT's rates." Motion at 13. CSXT, however, has misconstrued a "constraint" for "effective competition." Although the alternative truck rates may be a constraint upon CSXT's rates, they certainly are not an effective competitive constraint.

Assuming for the sake of argument that Mr. Heisler has accurately depicted the rates that M&G could obtain for alternative transportation via direct-truck or a truck-rail transload, this does not establish that alternative as an effective competitive constraint upon CSXT's pricing. In the recent DuPont small rate cases, the Board reaffirmed the long-established principal that comparable pricing among modes does not, by itself, constitute effective competition:

Even if we were to find that the cost of trucking the product is similar to the cost of using rail after the CSXT rate increase, it does not follow that the threat of trucking is evidence of effective competition. After all, even a monopolist finds that there is a profit-maximizing price beyond which it cannot raise prices without adversely affecting its bottom line. A carrier possessing market power might set its rates so high that it would begin to lose business to a higher-cost alternative (such as a trucking company). As the Board has previously noted, while this may create an "outer limit" constraint, it does not necessarily mean that effective competition is present.

E.I. du Pont de Nemours and Company v. CSX Transportation, Inc., STB Docket No. 42099 (served June 30, 2008) (underline in original) (footnotes omitted). See also, FMC Wyoming Corp. v. Union Pac. R.R. Co., 4 STB 699, 718 (2000) ("the fact that [carrier] matches prices set by alternatives with significantly higher costs, while maintaining a dominant market share, is not enough to demonstrate effective competition for the traffic at issue"); Ariz. Pub. Serv. Co. v.

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<sup>11</sup> This is before adding in the costs summarized in Part III.A., supra, that Mr. Heisler ignores or omits. In addition, Mr. Heisler has understated almost all of the rates for his proposed transportation alternatives. The correct rates have been restated, along with the differential compared with Mr. Heisler's rates, in Meyer V.S., Ex. 4. Furthermore, Mssr. Burris and Nolan have identified multiple errors and omissions in Mr. Heisler's cost calculations. Burris/Nolan V.S., Ex. 4.

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U.S., 742 F.2d 644, 650-51 (D.C. Cir. 1984) (a rate constraint does not equate to effective competition). Consequently, the fact that alternative rates are comparable to CSXT's rates merely demonstrates that CSXT has priced up to its nearest, higher cost constraint, not that such constraint constitutes effective competition.

Neither CSXT nor Mr. Heisler contend that rail transportation and the proposed alternatives have similar cost structures. To do so would defy logic. Nevertheless, M&G Witnesses Burris and Nolan have analyzed the relative profitability of the truck and rail rates for the 32 lanes in CSXT's Motion to demonstrate the magnitude of this differential. Using URCS for rail costs and various public sources for truck and bulk terminal costs, Mssrs. Burris and Nolan show that the cost (not rates) of providing the alternative transportation services described by Mr. Heisler are at least double the cost of providing rail service in all but two lanes,<sup>12</sup> and in most lanes, are triple or greater. Burris Nolan V.S. at 17, 19, 22, 24, and Ex. 3. Consequently, CSXT's profit margins at the challenged rate levels are many times higher than Mr. Heisler's alternatives. Id. CSXT's decision to set its rates at or near this higher cost alternative, while continuing to maintain a dominant market share in actuality demonstrates a lack of effective competition.

Among other factors that constitute evidence of market dominance, the Board has included "the absence of any diversion after a reasonable time following a rate increase." Special Procedures, 353 ICC at 929. A very important fact that must not be overlooked is that CSXT took significant { [REDACTED] } contract rate increases in 2009 on all but four of the 32 lanes in CSXT's Motion. Meyer V.S., Ex. 5. Only a year later, when the challenged tariff rates

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<sup>12</sup> The two exceptions are Lanes A-1 and A-8, where the differential is still a sizeable 62%. Id. at 16. Moreover, for the reasons stated in Parts IV.A. and D., infra, Mr. Heisler's direct truck alternatives are absurd because these destinations are rail car storage tracks.

became applicable, CSXT's rates in all 32 lanes increased by another { [REDACTED] }. *Id.* Since then, CSXT has continued to increase its tariff rates. This is not a case where the tariff rates represent the first significant rate increase and there may not have been sufficient time to determine if traffic will be diverted to other alternatives. CSXT imposed its first significant rate increases over two years ago, and has continued to increase rates every year since without a loss of traffic.<sup>13</sup> M&G's inability to divert traffic from CSXT to alternative modes, despite a multi-year period of CSXT rate increases, is compelling evidence of CSXT's market dominance.

Furthermore, the R/VC ratios generated by the rates in all 32 lanes that are in CSXT's Motion are well above 300%, and reach as high as 646%, despite the alternatives identified by CSXT. See Complaint Exhibits A and B. Although evidence that rail revenues substantially exceed variable costs by itself does not indicate market dominance, when such data is supported by other evidence, as is the case in this proceeding, it "may serve to buttress a finding that the existing level of competition may not be effective to constrain rail rates to a reasonable level." E.I. du Pont de Nemours and Company v. CSX Transp., Inc., STB Docket No. 42101, slip op. at 5 (served June 30, 2008), citing McCarty Farms v. Burlington Northern Inc., 3 I.C.C. 2d 822, 832 (1987).

**IV. THE DIRECT TRUCK ALTERNATIVES DESCRIBED BY MR. HEISLER FOR TWELVE LANES ARE NOT EFFECTIVE COMPETITION.**

CSXT and Mr. Heisler claim that direct truck shipments from Apple Grove provide effective competition for CSXT rail service in 12 lanes.<sup>14</sup> CSXT Motion at 10-11; Heisler V.S. at 8-10. The limitations on bulk truck loading at Apple Grove, as described in Part III.A., show

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<sup>13</sup> In some lanes, total overall volume for both rail and truck decreased from 2009 to 2010 due to customer demand, but there were no significant shifts from rail to truck. Meyer V.S., Ex. 5.

<sup>14</sup> The 12 lanes, which are identified by reference to the Exhibits to M&G's Complaint, are: A-1, A-4, A-5, A-8, A-10, A-14, B-8, B-14, B-18, B-20, B-35, and B-39.

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that the claims of CSXT and Mr. Heisler can be dismissed without any further analysis of the hypothesized truck transportation described in the CSXT Motion. Nevertheless, in this Section, M&G provides a lane-by-lane analysis that further confirms CSXT's market dominance over these lanes.

As a threshold matter, Mr. Heisler incorrectly calculated all of the direct truck rates. All of the truck rates that Mr. Heisler estimated based upon M&G's contract with {{ [REDACTED] [REDACTED] }} are 2010 contract rates that increased by {{ [REDACTED] }} in 2011. Meyer V.S., Ex. 6.. He also used rates for carriers that do not have access to some facilities, used incorrect mileages, used outdated ancillary charges, and omitted certain fees. For a complete summary of the differences, see Meyer V.S., Ex. 4.

The flawed nature of the CSXT plan is obvious because CSXT did not even consider whether M&G's customers in these lanes are willing or able to receive bulk truck shipments. When M&G customers order PET, they specify the type of transportation required. Meyer V.S. at ¶ 25. M&G is not in a position to demand that its customer accept a different form of transportation. Id. Nor does M&G ask the customer to justify the need for the type of transportation requested.. Id. Nevertheless, M&G has learned that there are several commonly recurring reasons why customers request, require, and/or prefer rail transportation, including:

1. Railcars are often used for storage by the customer. In contrast, trucks cannot be used as storage because they are owned by the trucking company; they must immediately unload upon arrival at the customer's facility. Many M&G customers do not have sufficient silo storage to make widespread use of truck transportation feasible. Additionally, some customers do not have any silos or the necessary truck unloading facilities.
2. Rail cars reduce the amount of work for the customer. Rail service means less labor for the customer because there are fewer hooks and unhooks needed. Rail service means less paperwork for the customer.
3. {{ [REDACTED]

- [REDACTED] }}
4. Quality concerns about transloading. See Part V.A., infra.
  5. Customer facilities lack equipment for truck unloading.
  6. Congestion and lack of space at customer facility. Because roughly four trucks are required to replace a single railcar, moderate to high volume customers do not want the congestion that would accompany truck transportation.
  7. {{ [REDACTED] }}
  8. { [REDACTED] }

Id. at ¶ 57.

In the remainder of this Section, M&G provides a lane-by-lane analysis of the 12 lanes where CSXT claims direct bulk trucking provides effective competition. M&G also identifies those lanes where customers have explicitly provided one or more of the above reasons for requesting delivery by rail car.

**A. Lane A-1: Apple Grove to Belpre, OH**

CSXT has proposed that bulk truck transportation is an effective competitor for CSXT rail shipments from Apple Grove to Belpre. Heisler V.S. at 9, and Ex. 2 at page 3. This lane had { [REDACTED] } loaded railcar shipments in 2009 and { [REDACTED] } in 2010.<sup>15</sup> Meyer V.S., Ex. 5. {{ [REDACTED] }} Id. CSXT's inclusion of Lane A-1 for direct truck competition is ludicrous, because CSXT ignores the purpose of this movement.

Belpre is a Bulkmatic facility used by M&G to store both loaded railcars and empty railcars and to transload PET to trucks. Meyer V.S. at ¶ 20. { [REDACTED] }  
[REDACTED] }

<sup>15</sup> In order to use the same data source that M&G produced to CSXT, the 2010 rail car and truck counts are only through November 30, 2010.

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Thus, shipping bulk trucks to Belpre would defeat the entire purpose of shipping PET to Belpre in the first instance.

Moreover, trucking to Belpre would increase the number of transloads to an unacceptable number due to contamination concerns. See Part V.A., infra. M&G would have to transload the PET into four trucks at Apple Grove, transload the PET back into a railcar for temporary storage at Belpre, and then transload out of the railcar into four trucks for delivery to a customer. Three transload events would be required, in contrast to only one transload at present.

The absurdity of even proposing direct truck shipments over this lane is magnified when one considers Mr. Heisler's proposal for another case lane, which originates in Belpre. For Lane B-37, from Belpre to Allentown, PA, Mr. Heisler proposes that M&G truck PET from Belpre to a bulk terminal in St. James, MD, for transloading back into rail cars on the NS. Consequently, the movement of PET to Allentown would consist of the following logistics nightmare:

1. Load railcar at Apple Grove.
2. Switch railcar to storage tracks at Apple Grove
3. Switch railcar to transload tracks at Apple Grove
4. Transload from railcar to bulk truck at Apple Grove
5. Transport via bulk truck from Apple Grove to Belpre
6. Transload from bulk truck to railcar at Belpre
7. Switch rail car to storage tracks at Belpre
8. Switch railcar from storage to transload tracks at Belpre
9. Transload from railcar back to bulk truck at Belpre
10. Transport via bulk truck from Belpre to St. James
11. Transload from bulk truck back to railcar at St. James
12. Transport via railcar from St. James to Allentown

In short, Mr. Heisler envisions no less than four transloads where the current rail movement of PET to Allentown has zero transloads, whether the rail car is shipped directly from Apple Grove or sent first to Belpre.



**B. Lane A-4: Apple Grove to Clifton Forge, VA**

CSXT has proposed that bulk truck transportation is an effective competitor for CSXT rail shipments from Apple Grove to Clifton Forge, VA. Heisler V.S. at 9, and Ex. 2 at p. 4. This lane had { [REDACTED] } loaded railcar shipments in 2009 and { [REDACTED] } in 2010, and there is {{ [REDACTED] [REDACTED] }} Meyer V.S., Ex. 5. CSXT's actions over the past two years suggest that, contrary to its Motion, CSXT does not believe there is effective competition for this lane. The 2009 contract signed between CSXT and M&G represented a { [REDACTED] } increase in the rate for this lane, and the CSXT tariff instituted in 2010 represented a further { [REDACTED] } increase. Meyer V.S., Ex. 5. Dramatic price increases like this are not indicative of a lane subject to effective competition. Indeed, because the result of CSXT's substantial rate increases over the past two years has been {{ [REDACTED] [REDACTED] }}, it appears that CSXT has chosen to exercise its market dominance to the maximum extent possible.

**C. Lane A-5: Apple Grove to Devon, KY**

CSXT has proposed that bulk truck transportation is an effective competitor for CSXT rail shipments from Apple Grove to Devon, KY (also known as Florence, KY). Heisler V.S. at 9, and Ex. 2 at page 5. This lane had { [REDACTED] } railcar shipments in 2009 and { [REDACTED] } in 2010. Meyer V.S., Ex. 5. {{ [REDACTED] [REDACTED] }} Id. CSXT's claim of effective competition is belied by the facts.

Even the understated truck rate determined by Mr. Heisler is {{ [REDACTED] }} than the already high CSXT tariff rate, hardly a competitive figure. Heisler V.S. at 9. { [REDACTED]

[REDACTED]

[REDACTED]

\_\_\_\_\_ } The recent rate increases demanded by CSXT of { \_\_\_\_\_ } in 2009 and { \_\_\_\_\_ } in 2010 also contradict CSXT's claim that this truck alternative effectively constrains its pricing. Meyer V.S., Ex. 5.

**D. Lane A-8: Apple Grove to Parkersburg, WV**

CSXT has proposed that bulk truck transportation is effective competition for CSXT rail shipments from Apple Grove to Parkersburg, WV. Heisler V.S. at 9, and Ex. 2 at page 6. This lane had { [REDACTED] } rail shipments in 2009 and { [REDACTED] } in 2010. Meyer V.S., Ex. 5. {{ [REDACTED] [REDACTED] }} Id. Just as with Lane A-1, the assertion that M&G could or should use truck transportation to Parkersburg is ludicrous, because Parkersburg is a CSXT rail yard, and M&G sends loaded railcars there for temporary storage before final shipment to customers. All of the issues identified for Lane A-1 above, apply to Lane A-8, except that Parkersburg is not a transload facility, which only makes CSXT's proposal more absurd for Lane A-8. Finally, the tariff rate established by CSXT in 2010 represented a { [REDACTED] } increase over the prior contract rate; an increase of this magnitude is not indicative of effective competition. Meyer V.S., Ex. 5.

**E. Lane A-10: Apple Grove to Rochester, NY**

CSXT has proposed that bulk truck transportation is effective competition for CSXT rail shipments from Apple Grove to Rochester, NY. Heisler V.S. at 9, and Ex. 2 at page 7. This lane has very high traffic volumes, with { [REDACTED] } loaded railcars in 2009 and { [REDACTED] } in 2010, and {{ [REDACTED] [REDACTED] }}. Meyer V.S., Ex. 5. CSXT's suggestion that trucking provides effective competition for this lane contravenes {{ [REDACTED] [REDACTED] }}

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}

Finally, the transportation rate increases endured by M&G on this lane also show that direct trucking does not constrain CSXT's rates. The 2009 contract represented { [REDACTED] } increase over the prior rate, and the 2010 tariff included another { [REDACTED] } increase. Meyer V.S., Ex. 5.

**F. Lane A-14: Belpre to Devon, KY**

CSXT has proposed that bulk truck transportation is an effective competitor for CSXT rail shipments from Belpre to Devon, KY. Heisler V.S. at 9, and Ex. 2 at page 8. This lane had { [REDACTED] } loaded railcars in 2009, { [REDACTED] } in 2010, and {{ [REDACTED] }} Meyer V.S., Ex. 5. Because this is the same customer as in Lane A-5, { [REDACTED] }, all of the same issues apply to Lane A-14. In addition, the recent rate increases demanded by CSXT suggest that direct trucking does not constrain CSXT's rates. The 2009 CSXT contract rate represented a { [REDACTED] } increase and the 2010 CSXT tariff increased an additional { [REDACTED] }. Meyer V.S., Ex. 5.

**G. Lane B-8: Apple Grove to Allentown, PA**

CSXT has proposed that bulk truck transportation is an effective competitor for the joint CSXT-NS rail service from Apple Grove to Allentown, PA. Heisler V.S. at 9, and Ex. 2 at page 9. This heavily used lane had { [REDACTED] } loaded railcars in 2009, { [REDACTED] } in 2010, and {{ [REDACTED] }}

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trucks in each year.<sup>16</sup> Meyer V.S., Ex. 5. M&G's customer at Allentown is { [REDACTED]

**[REDACTED]** }, and the contract with this customer specifies that { {

There have been isolated bulk truck shipments to the customer in this lane, constituting less than 2.5% of total volume. These bulk truck shipments occur when { [REDACTED] } is performing a trial of a new product, or when railcar delivery delays (or other problems) mean that a few emergency bulk trucks are needed to prevent the facility from shutting down. Meyer V.S. at ¶ \_\_\_\_.

Finally, recent CSXT transportation rate increases on this lane show that direct trucking does not constrain CSXT's rates. The 2009 CSXT contract rate represented a { █████ } increase, while the 2010 CSXT tariff represented a further increase of { █████ }. Meyer V.S., Ex. 5.

## H. Lane B-14: Apple Grove to Franklin, IN

CSXT has proposed that bulk truck transportation is an effective competitor for the joint CSXT-LIRC rail service from Apple Grove to Franklin, IN. Heisler V.S. at 9-10, and Ex. 2 at page 10. This heavily used lane had { [REDACTED] } loaded railcars in 2009 and { [REDACTED] } in 2010. Meyer V.S., Ex. 5. While Mr. Heisler suggests that Bulkmatic Transport provides effective competition for the CSXT-LIRC joint service, using bulk trucks instead of railcars on this lane would require the customer to accept approximately { [REDACTED] } bulk truck shipments per year. At that level of bulk truck usage, this single lane would represent { [REDACTED] } of the annual plastic business of M&G's primary motor carrier, Bulkmatic, which is a company that has 35 bulk

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terminals across the United States. Meyer V.S., Ex. 9 (M&G-P-017138), showing that Bulkmatic handles 45,000 bulk plastic shipments per year.

M&G's customer at Franklin is { [REDACTED] }, and the contract with this customer specifies that {{ [REDACTED]

[REDACTED] }} In 2009 and 2010, there were only {{ [REDACTED] }} and {{ [REDACTED] }} bulk truck shipments, respectively. Meyer V.S., Ex.

5. CSXT's rate increases in each of the past two years, although among the more moderate of the challenged rates, were still sizeable increases of { [REDACTED] }. Meyer V.S., Ex. 5.

**I. Lane B-18: Apple Grove to Havre de Grace, MD**

CSXT has proposed that bulk truck transportation is an effective competitor for the joint CSXT-NS rail service from Apple Grove to Havre de Grace, MD. Heisler V.S. at 10, and Ex. 2 at 11. This lane had { [REDACTED] } railcars in 2009 and { [REDACTED] } in 2010. Meyer V.S., Ex. 5. There were { [REDACTED] } bulk truck shipments in 2009 and { [REDACTED] } in 2010. Id.

M&G's customer at Havre de Grace is { [REDACTED] }, and the commodity supply contract with this customer states that {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}

Moreover, the recent CSXT transportation rate increases on this lane show that direct trucking does not constrain CSXT's rates. The 2009 CSXT contract rate represented a { [REDACTED] } increase, and the 2010 CSXT tariff represented an additional increase of { [REDACTED] }. Meyer V.S., Ex. 5.

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**J. Lane B-20: Apple Grove to Hebron, OH**

CSXT has proposed that bulk truck transportation is an effective competitor for the joint CSXT-CUOH rail service from Apple Grove to Hebron, OH. Heisler V.S. at 10, and Ex. 2 at 12. This lane had { █████ } railcars in 2009 and { █████ } in 2010. Meyer V.S., Ex. 5.

M&G's customer at Hebron is { [REDACTED] }, and the commodity supply contract with this customer states that {{ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] }}

**K. Lane B-35: Apple Grove to Waynesville, NC**

CSXT has proposed that bulk truck transportation is an effective competitor for the joint CSXT-NS rail service from Apple Grove to Waynesville, NC. Heisler V.S. at 10, and Ex. 2 at 13. This lane had { ■ } railcars in 2009, { ■■■ } in 2010, and {{ ■■■■■■■■■■ }}. Meyer V.S., Ex. 5. The recent CSXT rate increases on this lane show that direct trucking does not constrain CSXT's rates. The 2009 CSXT contract rate represented a { ■■■ } increase, and the 2010 CSXT tariff represented an additional increase of { ■■■ }. Meyer V.S., Ex. 5.

**L. Lane B-39: Belpre to Franklin, IN**

CSXT has proposed that bulk truck transportation is an effective competitor for the joint CSXT-LIRC rail service from Belpre to Franklin, IN. Heisler V.S. at 10, and Ex. 2 at 14. This lane had { ■ } railcars in 2009 and { ■ } in 2010. Meyer V.S., Ex. 5. This is the same customer location as in Lane B-14, {{ [REDACTED]

██████ } }

**V. THE TRUCK-TO-RAIL TRANSLOAD ALTERNATIVES PROPOSED BY MR. HEISLER DO NOT CONSTITUTE EFFECTIVE COMPETITION.**

CSXT and Mr. Heisler claim that truck-to-rail transloads from Apple Grove to transload terminals at St. James, MD; Columbus, OH; and Lima, OH, provide effective competition to CSXT rail service in 22 lanes.<sup>17</sup> CSXT Motion at 11-12; Heisler V.S. at 11-13. The limitations on bulk truck loading at Apple Grove, as described in Part III.A., show that the claims of CSXT and Mr. Heisler can be dismissed without any further analysis of the hypothesized truck transportation described in the CSXT Motion. Nevertheless, in this Section, M&G provides further analysis that confirms CSXT's market dominance over these lanes.

**A. Each Transload Degrades PET Quality And Increases Contamination Risk.**

Because all trucks at Apple Grove must be loaded from rail cars, each bulk truck shipment is a transload shipment. Each transload event introduces various quality issues that impact M&G's customers. First, each transload introduces an opportunity for contamination. Meyer V.S. at ¶ 64. Second, each transload means that the dust, "fines", and "streamer" content of the PET increases. *Id.* at ¶ 65. Therefore, M&G attempts to minimize the number of transloads. *Id.* at ¶ 64. Mr. Heisler's truck-to-rail transload proposal increases the number of transloads beyond normally acceptable levels for M&G.

PET is more susceptible to the adverse effects of transloading than most polymers. Polypropylene pellets, for example, are in the shape of spheres and, therefore, do not have nearly the abrasive quality of PET pellets, which are cylinder-shaped with sharp edges. *Id.* at ¶ 65. See

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<sup>17</sup> The 22 lanes, which are identified by reference to the Exhibits to M&G's Complaint, are: B-1, B-2, B-3, B-7, B-8, B-9, B-10, B-15, B-16, B-18, B-19, B-21, B-22, B-24, B-25, B-26, B-30, B-32, B-33, B-34, B-37, and B-48.

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also Meyer V.S., Ex. 11 (NEU Study at M&G-HC-017228 to 017238). Whenever PET pellets are handled or, especially, conveyed with force in a pneumatic system (such as that employed in self-loading bulk trucks), the sharp edges of the PET cylinders abrade one another and the internal sides of the tube and bulk hopper, causing the creation of PET dust and small PET particles called “fines.” Meyer V.S. at ¶ 65 and Meyer V.S., Ex. 11 (NEU Study). Moreover, PET pellets “are rather rigid,” meaning that the force generated when the pellets strike each other or the interior walls of the conveying tube, bulk truck, or railcar dissipates by chipping tiny pieces off of the pellets that create dust and fines. Meyer V.S., Ex. 11 (NEU Study) at 9.

Additionally, each transload event results in deposits of PET dust and fines on the inside wall of the conveying tube. These deposits eventually peel off, creating long strings or “streamers” in the PET product. Meyer V.S. at ¶ 66. While even a single transload will create some fines and dust, the amount is within acceptable limits for most of M&G’s truck customers. Id. at ¶ 68. Each additional transload, however, continues to create more dust, fines, and streamers. Id.

M&G attempts to control the level of fines and dust in its PET by limiting bulk trucks to using no more than {{ [REDACTED] }} pounds per square inch (“psi”) during the transload process (when blowing PET into customers’ silos). Id. at ¶ 69. Experience has shown that this speed and amount of handling minimizes problems for M&G’s customers. Id. See also Meyer V.S., Ex. 12 (M&G-HC-017156) (excerpt) (“Dust increase exponentially with increasing conveying velocities.”). See also Meyer V.S., Ex. 13 (M&G-HC-017221 to 017225). This reduction in pressure during the transload process is why PET requires {{ [REDACTED] }} to complete the truck loading process, despite Mr Heisler’s skepticism of M&G’s estimates. See Heisler V.S. at 16, n. 12.



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Customers currently receiving truck shipments are accustomed to a certain minimal level of fines and they can work with these levels without issues. Meyer V.S. at ¶ 71. Increasing the number of transloads during the transportation process, even if the customer still receives a railcar, however, will increase the level of fines, dust, and streamers. Id.

Dust, fines and streamers cause problems at customer facilities in several ways. Id. at ¶ 70. The offloader filters become clogged more rapidly as the quantity of dust and fines increases. Cleaning or replacing these filters takes time and reduces customer satisfaction. Id. Fines can cause “unmelts” or fisheyes, thus increasing defective products and scrap material. Id. PET resin needs to keep an even intrinsic viscosity value throughout the batch to make sure all particles melt at the same temperatures when going through the extruders. Id. Fines usually have a higher intrinsic viscosity, and thus do not melt as readily and cause defective preforms. Id. Streamers primarily are a problem around product transfer at the customer facility because they clog transfer lines, accumulating at the silo magnets, silo discharges, and the throats of the extruders. Id. Cleaning these areas creates additional work and cost for the customer, and involves stopping their machinery to remove streamers from the pipelines. Id.

If M&G delivers PET to customers with unacceptable levels of dust, fines, or streamers, those customers will not hesitate to change suppliers. Id. at ¶ 71. Product quality is very important and transportation shortcuts that compromise that quality are unacceptable. Id.

### **B. The St. James, MD, Terminal Has Inadequate Facilities for Loading PET.**

Mr Heisler asserts that Lanes B-8, B-18, B-19, and B-37, which are currently interchanged from CSXT to NS at Hagerstown, MD, could be handled competitively via bulk truck from Apple Grove or Belpre to St. James, MD, where the product could be loaded into

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railcars for tender to NS at the Utility Supply Company (“USC”).<sup>18</sup> Heisler V.S. at 11-12. This is neither an acceptable option for M&G nor a competitive constraint upon CSXT’s rates.

As evidenced by its name, the Utility Supply Company caters to electric utilities. According to its website, USC “provid[es] direct sales and distribution services of treated wood utility poles” and “was incorporated in the state of Maryland in 1992 for the purpose of providing warehousing and distribution services of pressure-treated wood utility poles.” Meyer V.S., Ex. 14 (M&G-P-017135 to 017137). There is no mention of any experience providing bulk transloading services, let alone having any knowledge or experience in the plastics business.

USC does not have many of the components that are necessary for a feasible PET transload facility. The site is not paved. It does not have a truck scale or a rail scale, which are essential in order to generate a weight ticker to invoice M&G’s customers. There is no covered area for transloading from bulk trucks to railcars, which means that any such transloading could only occur when there is no precipitation.<sup>19</sup> The site is also covered with stacks of utility poles, and appears to lack sufficient room to stage and maneuver the number of bulk trucks needed to transload the PET volumes received by M&G’s customers over these lanes. The USC facility is utterly inadequate for the tasks required to handle M&G’s traffic.

Mr. Heisler also relies on the wrong NS rail rate to show the cost of this alternative transportation is comparable to CSXT’s tariff rates. {{ [REDACTED]

[REDACTED]

[REDACTED]

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<sup>18</sup> Although Mr. Heisler claims that the Utility Supply Company is in Hagerstown, see Heisler V.S. at 11, it is actually in St. James, a town seven miles south of Hagerstown.

<sup>19</sup> Although transloading can occur from rail cars to trucks during precipitation without requiring shelter, the same is not true for truck-to-rail transfers, because it is necessary to open the hatches on top of the rail car, which would allow moisture to enter the car. Meyer V.S. at ¶ 75.

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{} Heisler V.S. at 12, n. 8. However, when M&G asked NS for contract rates from St. James to the issue destinations, NS quoted rates that were {{ }} per car greater than from the Hagerstown origin. Meyer V.S., Ex. 15. {}

{} Motion at 21, n. 12.

Moreover, Mr. Heisler appears to be misinformed as to what facilities are covered by USC's {{ }} facility fee. USC informed M&G that it only owns the property adjacent to the rail siding, which is owned by NS. Meyer V.S. at ¶ 76. Therefore, M&G would have to negotiate separately with NS for use of the siding. Id.

Mr. Heisler understates all of the truck rates, which are based upon M&G's contract with {{ }}. Mr. Heisler used 2010 contract rates, but those rates that increased by {{ }} in 2011. Meyer V.S. at ¶ 55. He also used incorrect mileages, used outdated ancillary charges, and omitted certain fees. For a complete summary of the differences, see Meyer V.S., Ex. 4.

While transloading to NS would ensure that the customers in these four lanes would receive rail deliveries, Mr. Heisler's plan would result in degraded PET quality for these customers, because there would now be two transloads instead of none. As described above in Part V.A, each transloading event creates dust, fines, streamers, and opportunities for contamination.

The Heisler plan also requires four bulk trucks to be simultaneously available at Apple Grove (or Belpre) to transload each rail car, then travel together to St. James, MD, and finally

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transload back into a single railcar at St. James. If a problem affects any of the four trucks, then the entire process is stalled until the receiving railcar at St. James is full.

CSXT's rate increase in all four lanes was { [REDACTED] } in 2009 and { [REDACTED] } in 2010 (except Lane B-37, which was { [REDACTED] } ). Meyer V.S., Ex. 5. Rate increases of this magnitude are hardly indicative of an effective competitive constraint upon CSXT's rates. The high volumes in all four lanes also complicate the logistics of transloading from trucks to rail.<sup>20</sup> Furthermore, M&G's supply contract with { [REDACTED] }, at Allentown, states that { { [REDACTED] }  
[REDACTED]  
[REDACTED]  
[REDACTED] }}

### C. Transloading Through Columbus, OH, Is Not Effective Competition.

Mr. Heisler asserts that bulk truck shipments to Columbus, OH for transloading to NS provide effective competition for Lane B-15: Apple Grove to Fremont, OH, and Lane B-24: Apple Grove to Nicholasville, KY. Heisler V.S. at 11-12. The option theorized by Mr. Heisler involves use of the NS Thoroughbred Bulk Transfer (“TBT”) facility in Columbus, and ultimate delivery to the customers in these two lanes would still be via rail.

M&G's customer at Fremont is { ██████████ }. Meyer V.S. at ¶ 61. This is a high volume customer that received { █████ } railcars in 2009 and { █████ } in 2010. Meyer V.S., Ex. 5. The CSXT rail rate in this lane has risen steeply since 2008. In 2009, CSXT increased the contract rate an astounding { █████ } and the 2010 tariff rate was increased a further { █████ }. Meyer V.S., Ex. 5. The significant level of these rate increases indicates that there is no effective constraint upon CSXT's rates.

<sup>20</sup> Total volume in Lane B-18 dropped significantly in 2010 {{{ [REDACTED] [REDACTED] }}}. Meyer V.S. at ¶ 58.

The M&G customer at Nicholasville is { [REDACTED] }, and, as stated earlier, {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }} Furthermore, dramatic CSXT rail rate increases in 2009 of { [REDACTED] }, and in 2010 of { [REDACTED] }, show that no effective competition exists. Meyer V.S., Ex. 5.

Finally, Mr. Heisler understates all of the truck rates, which are based upon M&G's contract with {{ [REDACTED] }}. Mr. Heisler used 2010 contract rates, but those rates that increased by {{ [REDACTED] }} in 2011. Meyer V.S. at ¶ 55. He also used incorrect mileages, used outdated ancillary charges, and omitted certain fees. For a complete summary of the differences, see Meyer V.S., Ex. 4.

**D. The CFER Transload At Lima Does Not Provide Effective Competition For Either Westbound Or Eastbound Movements.**

Mr. Heisler proposes to use a transload facility on the Chicago, Fort Wayne & Eastern Railroad ("CFER") in Lima, Ohio, for connections with western rail carriers through Chicago. Heisler V.S. at 12-14 and Ex. 2 at 22-39. According to CSXT, this transload location could ostensibly be used in conjunction with rail transportation on CFER both westbound and eastbound. As with the proposed transloads at St. James, MD, and Columbus, OH, this proposal also would require two transloads, one at Apple Grove and a second at Lima. All of the same impediments, therefore, exist for this option.

In all 16 of these lanes, except for Lane B-3, Mr. Heisler's estimated cost of the alternate transportation is higher than the challenged CSXT rates. Moreover, CSXT has taken sizeable rate increases since 2008 that belie CSXT's contention that alternate transportation options

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constrain its rates.<sup>21</sup> Instead, they suggest that the proposed alternative has a much higher cost structure that merely sets the monopoly ceiling price.

In Lane B-21, Apple Grove to Lenexa, KS, M&G's customer, { [REDACTED] }, has a supply contract with M&G which states that {{ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] }}

In Lane B-30, the destination, Sweetwater, TX, is a SIT yard and transload facility. Therefore, certain M&G railcars at Sweetwater are transloaded to bulk trucks for delivery to customers. If M&G were to follow CSXT's proposed alternative transportation for this lane, then any transload shipments from Sweetwater will have gone through three transload events prior to final delivery to the customer. The PET degradation and contamination potential makes the option postulated by CSXT unacceptable.

Finally, Mr. Heisler understates the cost to M&G of using this alternative to CSXT. All of the truck rates, which are based upon M&G's contract with {{ [REDACTED] }}. Mr. Heisler used 2010 contract rates, but those rates increased by {{ [REDACTED] }} in 2011. Meyer V.S. at ¶ 55. He also used incorrect mileages, used outdated ancillary charges, and omitted certain fees. Id. Furthermore, he omits {{ [REDACTED] }} in fixed terminal costs in order to accommodate all of M&G's needs at this site. Id. at ¶ 72. For a complete summary of the differences, see Meyer V.S., Ex. 4.

<sup>21</sup> See Meyer V.S., Ex. 5, for the specific rate increases imposed by CSXT on each individual lane in 2009 and 2010.

**VI. CSXT HAS MISREPRESENTED THE OBJECTIVES AND CONCLUSIONS OF M&G'S ALTERNATIVE LOGISTICS PLAN.**

CSXT refers to an M&G document titled "M&G Apple Grove Plant Alternative Logistics Plan," as evidence that M&G "could economically convert {{ [REDACTED] }} rail carloads to truck transportation." Motion at 8. There are two versions of this document, which CSXT has attached to Mr. Heisler's verified statement as Exhibits 6 and 7, but which present the same information in slightly different formats (all references hereafter are to the Heisler Ex. 6, the "July ALP"). CSXT contends that M&G declined to implement the ALP as "an attempt to obscure the jurisdictional obstacles to its rate complaint by [deliberately] failing to utilize viable transportation alternatives...." Motion at 8. See also, pp. 19-20. CSXT either misunderstands these documents or has chosen to misrepresent them.

{{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}<sup>22</sup>

The ALP was an academic exercise based upon multiple assumptions and varying sensitivities that never garnered serious consideration by M&G due to real-world impediments, most of which have been discussed extensively elsewhere in this Reply. Meyer V.S. at ¶ 81.

{{ [REDACTED]

[REDACTED]

[REDACTED]

---

<sup>22</sup>

{{ [REDACTED] }}  
[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}

CSXT, therefore, seriously misrepresents the ALP when it claims that this study "estimated that [M&G] could economically convert {{ [REDACTED] }} rail carloads to truck transportation." Motion at 8, citing Heisler Ex. 6 at 3 (M&G-HC-016671). {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}

{{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}



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There are numerous underlying assumptions that were made {{ [REDACTED] }}. First, { [REDACTED] } assumed that M&G could obtain a 10% discount on its 2009 truck rates because of higher truck volumes. Id. at ¶ 86. But this was not based upon actual rate quotes and failed to consider whether capacity constraints in the bulk truck market, both for equipment and drivers, could require M&G to pay even higher rates with this surge in volume. Id. Second, { [REDACTED] } did not consider whether M&G's rail-served customers would or could accept truck deliveries. Id. Third, { [REDACTED] } failed to consider any of the impediments to loading trucks at Apple Grove discussed in Part III.A. of this Reply. Id. All of those factors caused M&G to easily conclude that the ALP was not practical.<sup>23</sup> Id.

{{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}

23 {{ [REDACTED] }}

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CSXT challenges the credibility of M&G's reasons as to why the ALP strategy was not feasible. First, CSXT claims that the physical inability to load trucks is "hollow" because M&G already ships a substantial amount of PET by truck from Apple Grove. Motion at 20. But, as noted above, the limitation is the inability to load additional trucks beyond M&G's current capacity to serve its truck-only customers. Second, CSXT claims that M&G's quality concerns with transloads are contradicted by the fact that M&G already transloads from rail-to-truck for existing truck shipments. *Id.* at 21. But, as noted in Part V.A above, M&G's concerns are magnified with each additional transload, {{ [REDACTED] [REDACTED] }}. Third, CSXT rejects M&G's claim that customers prefer rail for a variety reasons, because M&G ships by truck to some customers already. *Id.* But as already noted, M&G trucks primarily to customers that do not have access to rail service and to rail customers that require the occasional expedited or emergency shipment. This fact is evidenced by the very low truck volumes that M&G's rail-served customers receive relative to rail shipments. *See Meyer V.S., Ex. 5.* Finally, CSXT attacks M&G's claim that the ALP would require a fundamental transformation of its operations, because M&G would only be increasing its use of a transportation mode that it already is using. Motion at 21. But, as M&G has noted in Part III.A. of this Reply, any dramatic increase in truck loadings at Apple Grove would require a significant transformation of its operations along with substantial infrastructure investment.

In short, contrary to CSXT's assertions, M&G did not "choose to become 'captive' to CSXT's rail service for purposes of establishing jurisdiction in this case through the device of refusing to take advantage of feasible and realistic alternatives to CSXT's rail transportation service." Motion at 21. Indeed, it is absurd that M&G would decline to use lower-priced

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alternatives to CSXT rail service for the sole purpose of establishing market dominance in this proceeding.<sup>24</sup> If true, that would mean that M&G chose to gamble millions of dollars on lawyers and consultants, not to mention the extensive demands upon its very limited internal resources, upon the uncertain outcome of an unprecedented rate case, rather than spend substantially less money to achieve a certain reduction in transportation costs. That gamble would have been magnified by the fact that M&G must pay higher tariff rates to CSXT than it would have paid under a contract for a period of 2-3 years with no assurance of receiving a single penny in reparations.

M&G went to great lengths to avoid filing this case precisely because of the time, expense and uncertainty. Meyer V.S. at ¶ 89. Indeed, M&G continued to negotiate for a contract with CSXT for 6 months after CSXT had switched M&G to tariff rates. M&G ultimately made the decision to initiate this proceeding only after reluctantly concluding that there were no other viable options. Id. The fact of the matter is that there never was a definite reduction in transportation costs because the ALP was logistically impractical, too costly to implement, and based upon unrealistic assumptions. Id.

## VII. CONCLUSION.

CSXT has utterly failed to carry its burden to raise “considerable doubts” as to M&G’s ability to demonstrate market dominance, which is a prerequisite for bifurcating the presentation of market dominance evidence from rate reasonableness evidence. CSXT’s entire Motion is predicated upon the ability of M&G to radically increase truck shipments from Apple Grove.

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Because it has not challenged M&G's discovery claims that it cannot directly load trucks at Apple Grove, CSXT attempts to demonstrate that M&G's current process for loading trucks directly from rail cars can be greatly expanded for a minimal investment. But, CSXT's simplistic plan fails on multiple levels.

First, CSXT's myopic focus upon just the transloading operations at Apple Grove means that CSXT has failed to consider the collateral effects of its transload plan upon other operations within the Apple Grove facility, and conversely, the effects of those operations upon CSXT's plan. In other words, CSXT treats Apple Grove as if it were first and foremost a transload facility, when in fact it is a PET production plant and transportation functions must play a supporting, not the lead, role. That failure is devastating because CSXT's plan ignores the limitations of the Apple Grove rail yard to support both the production and storage of PET and a radically expanded transload operation.


Second, CSXT fails to consider the impacts of its expanded transload plan upon M&G's customers. CSXT would shift a dozen lanes from direct rail to direct truck deliveries without any consideration of the customer's expressed preference, and in several instances, outright requirements, for truck delivery, or the ability of customers to receive extremely large volumes of PET by truck. In other lanes, CSXT would truck from Apple Grove to a transload facility in order to still be able to deliver PET to customers in rail cars, without considering the increase in dusts, fines, and streamers that contaminate PET with each transload event. M&G's customers, not M&G determine the mode of transportation. If M&G is unable or unwilling to fulfill their request, the highly competitive nature of PET markets means that the customer will find another producer that can meet its needs.

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Finally, CSXT merely presumes that similar rate levels between rail service and an alternate mode conclusively establish an effective competitive constraint upon CSXT's rates. Aside from the fact that M&G has identified numerous errors in CSXT's rate estimates for alternative transportation and omitted many costs, long-standing Board and judicial precedent recognizes that, when a carrier matches prices set by alternatives with significantly higher costs, while maintaining a dominant market share, similar rates do not mean that effective competition is present. M&G has demonstrated that CSXT's proposed transportation alternatives have costs 2-3 times rail transportation costs and that rail has maintained a dominant market share despite enormous rate increases.

For any, or all, of the above reasons, the Board should deny CSXT's Motion.

Respectfully submitted,



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February 18, 2011

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 18th day of February 2011 the foregoing has been served upon the following persons via the means described below:

**via electronic mail and first class mail to:**

G. Paul Moates  
Paul A Hemmersbaugh  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington, D.C. 20005

*Counsel for CSX Transportation, Inc.*



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Jeffrey O. Moreno

**PUBLIC VERSION**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

|                          |   |                      |
|--------------------------|---|----------------------|
| M&G POLYMERS USA, LLC    | ) |                      |
|                          | ) |                      |
| Complainant,             | ) |                      |
|                          | ) |                      |
| v.                       | ) | Docket No. NOR 42123 |
|                          | ) |                      |
| CSX TRANSPORTATION, INC. | ) |                      |
|                          | ) |                      |
| Defendant.               | ) |                      |
|                          | ) |                      |

**VERIFIED STATEMENT OF ANDRE S. MEYER**

1. My name is Andre S. Meyer. I am the Americas Supply Chain Manager for M&G Polymers USA, LLC ("M&G"), 450 Gears Road, Suite 240, Houston, TX 77067. M&G is incorporated in Delaware and produces polyethylene terephthalate ("PET") from production facilities in Apple Grove, West Virginia and Altamira, Mexico.

2. I previously provided a Verified Statement to the Surface Transportation Board ("Board" or "STB"), on December 9, 2010, in support of the M&G Consolidated Reply to a Motion to Bifurcate and Motion for Protective Order of the South Carolina Central Railroad Company. General introductory information about both M&G and my professional background is in that earlier Verified Statement, and I will not repeat it here.

3. I am submitting this Verified Statement ("V.S.") in support of the Reply of M&G to the Motion for Expedited Determination of Jurisdiction Over Challenged Rates ("Motion") of CSX Transportation, Inc. ("CSXT"). The purpose of this V.S. is to (1) provide an overview of the Apple Grove facility; (2) describe the transportation logistics involved in getting M&G's

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products to its customers; and (3) respond to several of the claims in the CSXT Motion, including claims made by CSXT's witness Gordon Heisler.

### **I. Overview of the M&G's PET Business**

4. M&G manufactures polyethylene terephthalate ("PET") at its facilities in Apple Grove, West Virginia and Altamira, Mexico. The manufacturing of PET requires two major raw materials, purified terephthalic acid ("PTA") and monoethylene glycol ("MEG"), and numerous minor raw materials. PET is produced and transported in the form of plastic pellets. M&G's customers use PET in many consumer and industrial applications such as plastic bottles, food packaging, and carpet fiber. PET is often recycled after use. M&G currently produces { [REDACTED] }<sup>1</sup> of PET at Apple Grove. Each grade adheres to distinct specifications needed by M&G's customers, and M&G cannot ship a product that does not meet the grade ordered by its customers.

5. M&G's customers include a wide variety of businesses that utilize PET in the manufacture of finished products. While these customers are located across the United States, the location of Apple Grove in the Eastern U.S. means that most of the PET produced at Apple Grove is used in the eastern half of the country. Most M&G customers in the Western U.S. receive PET from Altamira.

6. The PET business in the United States is highly competitive, with domestic and international producers all vying for the same PET customers. M&G must always remain vigilant regarding its product quality and cost structure due to this competition. It is not unusual for a customer to switch PET suppliers every year or every few years.

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<sup>1</sup> Pursuant to the Protective Order in this proceeding, M&G has delineated "CONFIDENTIAL" information by single brackets {...}, and "HIGHLY CONFIDENTIAL" information by double brackets {{...}}.



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## II. The Apple Grove Facility

7. The Apple Grove facility is located in a rural and mountainous area of West Virginia. It was designed around rail operations and, in fact, the CSXT mainline runs through the middle of the facility. Apple Grove was constructed in a patchwork fashion by various owners over a 52-year period; it was not built all at the same time.

8. Due to the rural location of Apple Grove, rail is a more efficient and reliable form of transportation than trucks. Adverse weather affects truck transportation more than rail, and trucks must often travel long distances to reach Apple Grove.

9. Raw materials for production of PET are delivered to Apple Grove by barge, rail, and truck. PTA, Purified Isophthalic Acid (“PIA”), and Diethylene Glycol (“DEG”) arrive via rail. MEG arrives via barge, and all other materials arrive via package truck. All raw materials are received, handled, and stored at Apple Grove until needed for PET production in one of M&G’s two production units.

10. Apple Grove has two production units { [REDACTED]  
[REDACTED] }.

Given that there are only two production units, M&G can generally only manufacture { [REDACTED] } at any one time. There is one scenario where M&G can produce { [REDACTED] } but this is limited to specific circumstances and specific grades. M&G produces the PET grades in campaigns usually lasting { [REDACTED] }. Because M&G can generally only produce { [REDACTED] } { [REDACTED] } {{ [REDACTED] }} { [REDACTED] } { [REDACTED] }

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11. { [REDACTED]  
[REDACTED] } this production schedule is adjusted during the month as needed to take into account actual orders, inventory in hand, and production issues. Demand for PET is irregular and difficult to predict, however, which complicates M&G's planning efforts.

{ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] }

12. Due to the unpredictability of PET demand, and the fact that { [REDACTED]  
[REDACTED] } can generally be manufactured at any one time, M&G maintains an average {{ [REDACTED]  
[REDACTED] }} { [REDACTED]  
[REDACTED] }

13. { [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] }

14. { [REDACTED]  
[REDACTED] } {{ [REDACTED] }} { [REDACTED]  
[REDACTED] }

15. Operation and storage tracks at Apple Grove are on both sides of the CSXT mainline. There are {{ [REDACTED] }} for railcars on Apple Grove tracks on the east side of the CSXT mainline, and {{ [REDACTED] }} on the west side.

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However, these figures represent the total number of spaces at gridlock. Only {{ [REDACTED] [REDACTED] }} of the spaces are available for use at any one time in order to ensure fluid rail operations, switching activities, and safe yard operations. M&G must have access to all the tracks, transload areas, { [REDACTED] } and outbound empties.

16. The Apple Grove rail yard is used { [REDACTED]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ } {{ \_\_\_\_\_

\_\_\_\_\_ }} Any

movement from one side of the mainline to the other must be performed by a CSXT crew with their own equipment.

17. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }

18. The existence of the CSXT mainline through the Apple Grove facility means that vehicular traffic from one side to the other of the plant is sometimes prevented by the existence of a passing or stopped CSXT train, or by CSXT switching activity. All vehicles, including trucks, must cross the CSXT mainline to access the western side of the Apple Grove facility

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from State Route 2. In other words, the only way for bulk trucks to access tracks 66-06 and 66-16 for transloading is by crossing the CSXT mainline.

### III. Other M&G Production and Transportation Facilities

19. Altamira is the site of M&G's other PET production facility in North America. Altamira generally supplies customers in Mexico and the Western United States, and produces PET for export. { [REDACTED]

[REDACTED]  
[REDACTED] }

20. M&G uses a CSXT-served railcar storage and transload facility in Belpre, Ohio { [REDACTED]  
[REDACTED]  
[REDACTED] } The Belpre facility is leased and operated by Bulkmatic Transport. { [REDACTED]  
[REDACTED]  
[REDACTED] }

21. M&G leases track from CSXT at Parkersburg, West Virginia, and uses this 25-car capacity yard track for storage of empty and loaded railcars when there is insufficient space at Apple Grove. M&G does not transload from railcars to bulk trucks at Parkersburg, and does not know if CSXT would allow such transloading. In any event, the condition of the leased tracks at Parkersburg would not permit M&G to transload safely and without quality risks.

22. Sweetwater, Texas is a storage-in-transit ("SIT") and transload facility owned, operated, and served by BNSF Railway Company. {{ [REDACTED]  
[REDACTED] }} M&G stores both empty and loaded railcars at Sweetwater. Loaded railcars are stored at Sweetwater until needed to supply a customer; then,

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M&G tenders the railcar to BNSF or has the railcar placed on the transload track for transfer to a bulk truck.

23. { [REDACTED]  
[REDACTED]  
[REDACTED] }

24. Vado, New Mexico is the site of a SIT facility on BNSF. M&G primarily uses this facility for shipments from Altamira, and no transloading occurs at Vado.

### **IV. Factors That Dictate The Choice Between Rail and Truck.**

25. When a customer orders PET from M&G, the customer also specifies the required mode of transportation. Certain customers have pre-selected the mode of transportation in their supply contracts, while others select on a shipment-by-shipment basis. When specifying the mode of transportation, the customer does not necessarily explain why that mode is necessary. Customers that have access to rail service regularly specify rail transportation. M&G always endeavors to meet its customers' requests. To ignore customer requests, or to try to convince a customer to accept a different type of transportation, would constitute poor customer service and could result in the customer switching to another PET producer, one that could meet the customer's needs.

26. The truck loading capacity of Apple Grove is used almost exclusively to serve customers who require trucks, who are not rail-served, and who order less than railcar quantities of PET. Additionally, M&G uses the truck loading capacity of Apple Grove to provide emergency or expedited shipments to customers who normally receive rail shipments. If M&G were to shift significant quantities of current rail shipments to bulk trucking, it would displace these other uses of bulk trucking (such as service to customers who are not rail-served). The

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result would be a reduction in the volume of M&G's PET sales to an amount far below the current level and the production capacity of Apple Grove.

27. I am aware that, in his Verified Statement, CSXT's witness Gordon Heisler has asserted that Apple Grove bulk truck loading capacity is {{ [REDACTED] }} trucks per day. This figure is far in excess of historical numbers at Apple Grove. { [REDACTED]

[REDACTED] } {{ [REDACTED] }} { [REDACTED]  
[REDACTED] } {{ [REDACTED] }}. { [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] } Thus, based on the experience of Apple Grove during peak truck demand, the average maximum truck loading capacity is {{ [REDACTED] }} per day.

28. There are a variety of activities at Apple Grove that take place in the facility's rail yards. { [REDACTED]

[REDACTED] }

M&G also targets maintaining an inventory of {{ [REDACTED] }} to ensure uninterrupted operations, and shipments of PTA often arrive by rail daily. { [REDACTED]

[REDACTED]  
[REDACTED] }

29. Apple Grove's rail and truck loading operations must be evaluated as two separate facilities due to the division of the plant by the CSXT mainline. { [REDACTED]

[REDACTED]  
[REDACTED]

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[REDACTED] }. Switching across the mainline must be done by CSXT.

30. { [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] }

31. { [REDACTED]  
[REDACTED]  
[REDACTED] }

32. The tracks on the west side of the plant (where railcars are loaded from production from CP-3), the No. 66 tracks, have a gridlock capacity of {{ [REDACTED] }}. In order to maintain a fluid and functioning yard, the true operating capacity is {{ [REDACTED] }}. The CP-3 unit averages {{ [REDACTED] }} loadings per day during production campaigns, and M&G must maintain {{ [REDACTED] }} spaces for empty cars in the No. 66 tracks in order to maintain a regular flow of empty cars for loading during the campaign. {{ [REDACTED] }} spots on two of the No. 66 tracks must be kept open for transloading. Finally, {{ [REDACTED] }} car spots are needed to maintain the inventory of the PET grades not currently in production.

33. The tracks on the east side of the plant (where railcars are loaded from production from CP-4), the No. 55 tracks, have a gridlock capacity of {{ [REDACTED] }}. In order to maintain a fluid and functioning yard, the true operating capacity is approximately {{ [REDACTED] }}. PTA rail cars occupy {{ [REDACTED] }} car spots. Approximately {{ [REDACTED] }} empties are needed to ensure a continuous flow of empty cars for loading during a production campaign that loads, on average,

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{{ [REDACTED] }} cars per day. M&G needs {{ [REDACTED] }} empty railcars on the east side, compared to {{ [REDACTED] }} empty railcars on the west side { [REDACTED] } because M&G uses dedicated fleets for some of its specialty PET production.

34. Furthermore, {{ [REDACTED] }} on two tracks must be kept open for transloading on the CP-4 side under Mr. Heisler's plan. Finally, the inventory for the PET grades not currently in production requires approximately {{ [REDACTED] }} car spots. { [REDACTED] }  
[REDACTED]  
[REDACTED] }

35. Operations on the east side at Apple Grove are complicated by the daily CSXT switch (6 days per week), which occurs on Track No. 55-1. { [REDACTED] }  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] }

36. { [REDACTED] }  
[REDACTED]  
[REDACTED] } Loaded rail cars in-transit also serve as a form of inventory storage.



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### **V. Implications of Increased Bulk Truck Loading at Apple Grove**

37. The irregular nature of demand for M&G's products greatly complicates the precise placement of railcars which would be warranted by dramatically increased truck-loading at Apple Grove. That is, dramatically increased loading of trucks from railcars at Apple Grove would require both (1) an increase in switching, and (2) a precisely executed plan of placing railcars on the transload tracks at the correct time. When a railcar is loaded, M&G does not know the car's ultimate destination. Due to the irregularity of customer orders, however, M&G cannot precisely "stage" or plan where each unloaded and loaded railcar should be at all times.

38. The limited track capacity at Apple Grove means that M&G cannot dedicate tracks to loaded cars of specific PET grades, although that would make it easier to switch cars onto the transload tracks as needed. Increased transloading would increase the number of times M&G would have to routinely pull large blocks of cars from multiple storage tracks in order to access the ones that are needed on the transload tracks. All of this switching to and from the transload tracks must be coordinated with the switching of cars to and from rail loading spots, the switching of raw material rail cars to and from unloading spots, and the daily inbound and outbound switching of loaded and empty cars with CSXT.

39. A rail car may need to be switched to the transload tracks multiple times before it is empty. There are two reasons for this. First, standard rail car capacity is slightly greater than the capacity of four trucks and the leftover amount, known as a "heel," must be loaded into a fifth truck. This fifth truck will be light-loaded unless it can load an additional amount of PET from a second railcar; but this then creates an even larger "heel" in that rail car. Second, there will be orders for less than full rail car quantities. In both instances, the partially loaded rail car

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must be switched back to the storage tracks to await another customer order for that grade of PET, at which time the rail car must be switched back to a transload track.

40 Increased bulk truck loading would require M&G to still maintain railcars { [REDACTED] } and additional railcars at a later bulk terminal for any rail deliveries. Switching large numbers of railcars to support bulk trucking also involves numerous timing complications. M&G would have to schedule trucks to unload rail cars on the transload tracks as close together as possible in order to keep pace with Mr. Heisler's transload capacity plan. Otherwise, loading time is lost when pulling empty cars from the transload tracks and spotting loaded cars, and switching activity is inefficient when the cars on a transload track cannot be switched out as a single block of empties.

41. Precise scheduling of bulk truck loading times would also increase the truck rates beyond those used by Mr. Heisler to compare truck costs with rail costs. { [REDACTED] }  
[REDACTED]  
[REDACTED] } Because Apple Grove is in a remote rural location, trucks must travel up to 200 miles to pick up a load of PET. This flexibility improves the carrier's ability to minimize empty miles by using a truck that is already in the general vicinity of Apple Grove. In order to execute Mr. Heisler's plan, M&G would have to deprive carriers of this flexibility, which undoubtedly would increase M&G's truck rates. {{ [REDACTED] }  
[REDACTED]  
[REDACTED] }}

42. Another complication that could arise in precise scheduling of bulk trucks is that pneumatic loading of bulk trucks to the correct weight is inherently imprecise. PET is more dense than other polymers, such as polypropylene and polyethylene, and, therefore, bulk trucks

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reach their maximum load weight before the entire volume of the truck is full. The driver must use his best judgment as to when the truck has reached the maximum road limit weight limit, and the exact weight of the truck is not known for certain until the truck is unhooked from the railcar, sealed, and drives to the truck scale. If the truck is overweight, it must return to the rail car to off-load product. If the truck is underweight, it must return to the rail car to add more PET.

43. Four bulk trucks cannot load simultaneously from a single railcar at Apple Grove. The transload tracks at Apple Grove do not allow bulk trucks to park perpendicular to a railcar; thus, trucks must park parallel to the railcars. A single truck measures roughly the same length as a rail hopper car. The transloading process occurs at the rear of the truck and consumes additional space. Moreover, transloading can only occur on one side of a railcar at a time because Apple Grove does not have transload roads on both sides of its transload track. Adjacent railcars also cannot be accessed by bulk trucks at the same time, even from the same side. Mr. Heisler has suggested that 50% of the transload spots can be used for transloading at any one time. A more realistic scenario, though still aggressive, would posit 25% as a target. This would entail switching two of the tracks while the other two are being used for transloading. On the tracks where transloading is occurring, every other car could possibly be accessed.

44. { [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] } { [REDACTED] }  
{ [REDACTED] }

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**VI. Costs Omitted in the CSXT Motion**

45. A dramatic increase in bulk truck loading at Apple Grove would entail numerous costs that M&G now avoids or is able to minimize at the current level of bulk truck loading. Mr. Heisler has omitted many of those costs in the rates he used for comparison purposes as part of the CSXT Motion. See Exhibit 4 to this V.S. for the correct rates. In addition, Mr. Heisler omitted both personnel and facility costs.<sup>2</sup>

46. The substantially increased number of transloads that Mr. Heisler contemplates cannot be performed without additional facilities. { [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] } Of course, additional railcars would add even more congestion to Apple Grove.

47. { [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

---

<sup>2</sup> Mr. Heisler did include some construction costs for transload track lighting, an additional truck scale, and construction of two additional transload tracks. However, these costs are understated because Apple Grove is a unionized facility that must use union labor for these construction projects.

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██████████ } {{ ██████████ }} for equipment, labor and demolition, and nearly {{ ██████████ }} on the west side, which includes construction of a new building.

48. Roads are another facility cost ignored by Mr. Heisler. Higher truck volumes would require M&G to pave the existing road surfaces to existing road surfaces leading to the No. 66 transload tracks. West Virginia air regulation 45CSR7 requires facilities to control particulate emissions from all roads within their facilities. Although M&G has managed dust in the past by applying a dust suppressant, the {{ ██████████ }} increase in truck shipments contemplated by Mr. Heisler would require costs for either expensive repeated applications throughout the year or paving the road with asphalt.

49. Additionally, the continuous flow of truck traffic contemplated by Mr. Heisler would require concrete aprons at the transload areas. At current truck volumes, M&G is able to lay mats when trucks are transloading, but increased truck traffic would require M&G to add concrete pads to the transload areas in order to minimize dirt and rock contamination during the transload. In fact, many M&G customers require concrete or asphalt aprons for truck loading. M&G has added concrete and asphalt aprons at its Altamira production facility in response to those customer demands.

50. Mr. Heisler also omitted lighting in the rail yards. Mr. Heisler's proposal for 24/7 transloading activity would require not just lighted transload tracks, but also lighted railyards for the switching needed to support 24/7 transloading.

51. Greater transloading would require increased rail switching and, consequently, M&G would need to acquire one or two additional switch engines, depending on whether an additional engine is needed for each side of the rail yard. Without these additional switch engines, M&G would not be able to keep up with the switching of raw materials, empty cars to

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loading spots, loaded cars to the storage yard, and transload switching. The estimated cost of two switch engines is {{ [REDACTED] }}.

52. Mr. Heisler's proposal for 24 hour bulk truck loading would require M&G to incur substantially increased labor costs for which he fails to account. These costs, and the annual amount that would be incurred by M&G, include {{ [REDACTED] }}

[illegible]

53. I have not been able to quantify all of the costs omitted by Mr. Heisler in devising his proposal for 24/7 truck transloading at Apple Grove. Nevertheless, the costs that I have estimated are many multiples greater than Mr. Heisler has projected.

## VII. Costs Incorrectly Calculated by CSXT.

54. Although Mr. Heisler purports to develop his cost estimates for various alternate transportation options from M&G's contracts with motor carriers and other rail carriers, there are numerous inaccuracies.

55. For example, Mr. Heisler relied on outdated {{ [REDACTED] }} rates that increased by {{ [REDACTED] }} on January 1, 2011. See Exhibit 6 to this V.S. At Belpre, he used A&R truck rates even though Bulkmatic is exclusive to the Belpre facility. Mr. Heisler also has not always used the correct accessorial charges, and he does not use the correct highway miles to

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calculate mileage-based rates and fuel surcharges. I have restated all of Mr. Heisler's cost estimates in Exhibit 4 to my V.S.

56. Mr. Heisler also used the wrong rail rate on the Norfolk Southern Railway for proposed shipments from the Utility Supply Company site in St. James, Maryland. {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }} See Exhibit 15 to my V.S.

### VIII. CSXT's Failure to Consider Customer Requirements..

57. Mr. Heisler has ignored customer requirements for rail cars on those lanes for which he would substitute direct truck service. See ¶ 25 above. While M&G does not ask why customers specify a certain mode of transportation, M&G has learned that there are several commonly recurring reasons why customers request, require, and/or prefer rail transportation, including:

- Railcars are often used for storage by the customer. In contrast, trucks cannot be used as storage because they are owned by the trucking company; they must immediately unload upon arrival at the customer's facility. Many M&G customers do not have sufficient silo storage to make widespread use of truck transportation feasible. Additionally, some customers do not have any silos or the necessary truck unloading facilities.
- Rail cars reduce the amount of work for the customer. Rail service means less labor for the customer because there are fewer hooks and unhooks needed. Rail service means less paperwork for the customer.
- {{ [REDACTED] }}  
[REDACTED] }}
  - Quality concerns about transloading.
  - Customer facilities lack equipment for truck unloading.

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- Congestion and lack of space at customer facility. Because roughly four trucks are required to replace a single railcar, moderate to high volume customers do not want the congestion that would accompany truck transportation.
- {{ [REDACTED] }}
- { [REDACTED] }

58. Exhibit 5 to my V.S. provides a summary of recent truck shipments, railcar shipments, CSXT contract, and CSXT tariff rates on the lanes covered by the CSXT Motion. This table confirms the highly competitive and irregular nature of PET demand. For example, {{ [REDACTED] }} In other lanes, volume fluctuated from 2009 to 2010 simply because overall demand fluctuated. It also shows that, despite { [REDACTED] } rate increases since 2008, CSXT still retains the lion's share of the traffic in the case lanes.

59. The assertion that bulk trucking provides effective competition is also spurious due to the volumes of trucks that would be required. Many customers do not have the space to handle or unload numerous trucks on a daily basis. Exhibit 5 summarizes the rail and truck volumes over the case lanes in 2009 and 2010. Those customers that received large numbers of railcars would not be receptive to receiving four times as many trucks.

60. Mr. Heisler has ignored the limitations expressed in the supply contracts that M&G has with many of its customers. { [REDACTED] }  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] } These contracts cover multiple case destinations, because these customers own and operate multiple production facilities.



PUBLIC VERSION

61. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }

62. It is also important to note that { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } usually only occur during trial of a new product, or when railcar delivery delays (or other problems) mean that a few emergency bulk trucks are needed to prevent the facility from shutting down.

63. High volume lanes would also use a not insignificant percentage of U.S. bulk truck capacity. For example, Mr. Heisler has proposed that shipments to Franklin, Indiana from Apple Grove in Lane B-14 can be effectively transported by Bulkmatic. This single lane would consume { [REDACTED] } of the nationwide plastic bulk business of Bulkmatic. See Ex. 9 to this V.S.

**IX. CSXT Disregards Contamination Risks of Extra Transloading.**

64. In many lanes, Mr. Heisler has proposed some form of transloading and, in certain cases, numerous transloadings, as a replacement for CSXT rail service. Mr. Heisler has ignored the fact that each transload event degrades the PET and increases the contamination risk. This is one reason that M&G attempts to minimize the number of transloads.

65. Each transload means that the dust and “fines” content of the PET increases. PET pellets are cylinder-shaped with sharp edges. Thus, they are different from polypropylene

## PUBLIC VERSION

pellets, which are in the shape of spheres and, therefore, do not have nearly the abrasive quality of PET. See Exhibit 11 to this V.S. Whenever PET pellets are handled or, especially, conveyed with force in a pneumatic system (such as that employed in self-loading bulk trucks), the sharp edges of the PET cylinders abrade one another and the internal sides of the tube and bulk hopper, causing the creation of PET dust and small PET particles called “fines.” PET pellets “are rather rigid,” meaning that the force generated when the pellets strike each other or the interior walls of the conveying tube, bulk truck, or railcar dissipates by chipping tiny pieces off of the pellets that create dust and fines. See also Ex. 11 at 9.

66. Each transload event also results in deposits of PET dust and fines on the inside wall of the conveying tube. These deposits eventually peel off, creating long strings or “streamers” in the PET product.

67. Mr. Heisler’s truck-to-rail transload proposal increases the number of transloads beyond normally acceptable levels for M&G. { [REDACTED] } most of Mr. Heisler’s proposals require a minimum of two, and up to four, transloads between the origin and destination.

68. While even a single transload will create some fines and dust, the amount is within acceptable limits for most of M&G’s truck customers. Each additional transload, however, continues to create more dust, fines, and streamers. This adversely effects the quality of M&G’s PET, which can lead to a loss of customers for M&G.

69. Transload speed is a factor in the creation of dusts, fines and streamers. See attached Ex. 12 (excerpt from dust control mechanism manual) at M&G-HC-017156. M&G attempts to control the level of fines and dust in its bulk truck PET shipments by limiting bulk trucks to using {{ [REDACTED] }} during the transload

## **PUBLIC VERSION**

process. Experience has shown that keeping transload pressure and speed low minimizes problems for M&G's customers. See example provided at Ex. 13. M&G's careful attention to the pressure and speed of transload is why M&G requires {{ [REDACTED] }} to complete the truck loading process, despite Mr. Heisler's skepticism of this fact.

70. Dust, fines and streamers cause problems at customer facilities in several ways. The offloader filters become clogged more rapidly as the quantity of dust and fines increases. Cleaning or replacing these filters takes time and reduces customer satisfaction. Fines can cause "unmelts" or fisheyes, thus increasing defective products and scrap material. PET resin needs to keep an even intrinsic viscosity value throughout the batch to make sure all particles melt at the same temperatures when going through the extruders. Fines usually have a higher intrinsic viscosity, and thus do not melt as readily and cause defective preforms. Streamers primarily are a problem around product transfer at the customer facility because they clog transfer lines, accumulating at the silo magnets, silo discharges, and the throats of the extruders. Cleaning these areas creates additional work and cost for the customer, and involves stopping their machinery to remove streamers from the pipelines.

71. Customers currently receiving truck shipments are accustomed to a certain minimal level of fines and they can work with these levels without issues. Increasing the number of transloads during the transportation process, even if the customer still receives a railcar, will increase the level of fines, dust, and streamers. If M&G delivers PET to customers with unacceptable levels of dust, fines, or streamers, those customers will not hesitate to change suppliers. Product quality is very important and transportation shortcuts that compromise that quality are unacceptable.

## **PUBLIC VERSION**

### **X. Use of Unacceptable Transload Facilities.**

72. For several lanes, Mr. Heisler has proposed that M&G could use a site on the Chicago, Fort Wayne & Eastern Railroad for transloading. M&G has estimated that it would cost {{ [REDACTED] }} to accommodate M&G's needs at this site. See Exhibit 4 to this V.S. For other lanes, Mr. Heisler has proposed that M&G could use the Utility Supply Company ("USC") in St. James, Maryland as a transload location that would bypass CSXT to reach Norfolk Southern. This is not an acceptable option for M&G.

73. A brief review of the Utility Supply Company website shows that it is involved in, and has the "purpose" of, supplying treated wood utility poles to electric utilities. See Ex. 14 to this V.S. There is no mention of any experience providing bulk transloading services, let alone having any knowledge or experience in the plastics business.

74. USC does not have many of the components that are necessary for a feasible PET transload facility. The site is not paved. It does not have a truck scale or a rail scale, which are essential in order to generate a weight ticket to invoice M&G's customers. The site is also covered with stacks of utility poles, and appears to lack sufficient room to stage and maneuver the number of bulk trucks needed to transload the PET volumes received by M&G's customers over these lanes. See my Exhibit 5 for those volumes. The USC facility is plainly inadequate for the tasks required to handle M&G's traffic.

75. Additionally, there is no covered area for transloading from bulk trucks to railcars, which means that any such transloading could only occur when there is no precipitation. Although transloading can occur from rail cars to trucks during precipitation without requiring shelter, the same is not true for truck-to-rail transfers, because it is necessary to open the hatches on top of the rail car, which would allow moisture to enter the car.

**PUBLIC VERSION**

76. Moreover, Utility Supply Company has informed M&G that it only owns the property adjacent to the rail siding. The siding itself is owned by NS. Therefore, M&G would have to negotiate separately with NS for use of the siding, and Mr. Heisler's reliance on the {{ [REDACTED] }} facility fee provided by Utility Supply is, therefore, understated.

**XI. CSXT Misconstrues the Alternative Logistics Plan**

77. CSXT wrongly accuses M&G of deliberately choosing not to use less costly alternatives to CSXT in order to "create" market dominance in this proceeding. For all of the reasons that I have given in my V.S., M&G does not have practical or economic alternatives to CSXT. There is no need to artificially "create" market dominance.

78. Nevertheless, CSXT contends that a document that was prepared for M&G by { [REDACTED] }, shows that M&G "could economically convert {{ [REDACTED] }} rail carloads to truck transportation." Motion at 8. This is not in fact what the ALP states. Nor was that the ALP's objective.

79. {{ [REDACTED] }  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] }}

80. {{ [REDACTED] }  
[REDACTED]

PUBLIC VERSION

[REDACTED]

[REDACTED] }}

81. The ALP was an academic exercise based upon multiple assumptions and varying sensitivities that never garnered serious consideration by M&G due to real-world impediments, most of which have been discussed extensively elsewhere in my V.S.

82. {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}

83. {{ [REDACTED]

[REDACTED]

[REDACTED] }}

84. {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}

85. {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_}}

87. {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}

\_\_\_\_\_

**PUBLIC VERSION**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

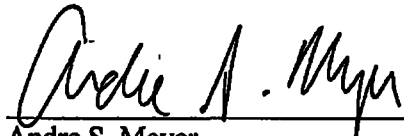
[REDACTED] }}

89. M&G went to great lengths to avoid filing this case precisely because of the time, expense and uncertainty. In fact, M&G continued to negotiate for a contract with CSXT for six months after CSXT had switched M&G to tariff rates. M&G ultimately made the decision to initiate this proceeding only after reluctantly concluding that there were no other viable options. The fact of the matter is that there never was a definite reduction in transportation costs because the ALP was logistically impractical, too costly to implement, and based upon unrealistic assumptions.



### VERIFICATION

I, Andre S. Meyer, verify under penalty of perjury that I have read the foregoing Verified Statement, that I know the contents thereof, and that the same are true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.

  
\_\_\_\_\_  
Andre S. Meyer

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Andre Meyer

## **Exhibit 1**

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**Exhibit 3**

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## Shortage of truck drivers predicted

Published: June 9, 2010 at 9:04 PM

WASHINGTON, June 9 (UPI) — Retirements, tougher regulations and a need to replace laid-off drivers mean the trucking industry will need 200,000 drivers by the end of 2011, a report says.

A report sponsored by Penske Logistics, issued by the Council of Supply Chain Management Professionals, notes the U.S. trucking industry has lost almost 150,000 jobs since the start of 2008 due to tougher safety regulations designed to get bad drivers off the road, and those laid off due to the recession and retirements, CNN reported Wednesday.

The author of the report, Rosalyn Wilson, said even though unemployment is high nationwide, the trucking industry will face a challenge finding drivers during the next year and a half.

"It's not a very attractive profession," she said. "People want jobs, but they also want their quality of life, to be home with their family at the end of the work day.

"We're going to need 1 million drivers in next 15 years just to deal with replacing retirees and the normal growth of freight," she said.

Wilson said in May 2009 the average pay for a trucker was about \$37,730. But more miles and the driver shortage are likely to increase wages in the years ahead, CNN reported.

"How much of a driver shortage we have will depend on how much the economy picks up," she said.

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M&G-P-017113



# Shortages of trucks and truck drivers stall product deliveries

Updated 9/9/2010 6:26 PM

By Paul Davidson, USA TODAY



By Nati Harnik, AP

American Trucking Association officials say demand is up recently after many operators slashed fleets and staff during the downturn.

Shortages of trucks and drivers are delaying some deliveries of products and raw materials across the USA and raising freight costs.

The crunch is defying a tepid recovery and near-10% jobless rate that should supply a vast pool of unemployed construction and manufacturing workers. Shortages are likely to worsen when the economy heats up and new rules kick in later this year that will make it tougher to hire drivers with poor safety records and could limit the number of hours drivers can work, experts say.

"What's going to happen in six, 12, 18 months?" says Jon Langenfeld of research firm R.W. Baird.

Since June, PPG Industries (PPG), a top glass and coatings maker, occasionally hasn't been able to find trucks to transport glass from its factories to

window fabricators, delaying deliveries a day or two. "If nothing arrives ... it can shut a plant down," says PPG supply chain manager Jeffrey Smith.

After plunging in the recession, contract rates are up about 4% in 2010, and spot rates are up as much as 40%, Langenfeld says. About 70% of shippers surveyed reported tight capacity for full truckload service this quarter, up from 27% the first quarter, according to research firm Wolfe Trahan.

**COMPEITION FOR TRUCKS:** Double-stacked freight trains

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**RECOVERY WATCH:** Tracking the economy

Operators slashed their fleets and workforces in the downturn as demand fell 24%, says Bob Costello, chief economist for the American Trucking Associations. Thousands of small firms closed, while survivors trimmed fleets an average 14%.

Demand is up 10% this year, Costello says, as manufacturing and retail sales have rebounded moderately. But many firms are struggling to beef up fleets and staff. New truck prices have risen \$25,000 since 2002 because of stricter emission standards, and many smaller carriers can't get loans because of tight credit requirements, Langenfeld says.

Meanwhile, thousands of older drivers retired when they were laid off or saw their workloads cut. Yet it's tough to attract younger workers to a lifestyle that typically means being away from home for weeks at a time for salaries that start at about \$38,000,

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**Con-way Truckload (CNW) of Joplin, Mo., which sought 70 drivers this summer, vied with rivals offering \$10,000 bonuses, says President Herb Schmidt. Schmidt and Card recently began screening drivers based on the anticipated safety standards. The criteria could shrink the driver pool 5% to 12%, says Rosalyn Wilson of consulting firm Delcan. She projects a 400,000-driver shortage by 2012.**

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# Truckers Worried About the Long-Haul

Trucking Industry Expecting Huge Shortage of Drivers

By BRANDI KRUSE

Feb. 26, 2010

The long-haul trucking industry is looking for more than a few good men – and women. Despite the weak economy and a national unemployment rate hovering just under 10 percent, trucking companies report a shortage of long-haul drivers – a problem federal labor officials and trucking officials say will grow worse over the next 10 years. "We expect we will have a sizable driver shortage in the less popular driving jobs," said Clayton Boyce with the American Trucking Association. "The least desirable jobs are the ones where you are driving a truck for weeks or more and never getting home." The implications for consumers are clear. "If the jobs go unfilled or if there is a need to raise wages in order to attract workers into those occupations, I think either thing would have a tendency to raise the cost of goods," said Eric Thompson, professor of economics at the University of Nebraska-Lincoln. Tim Aschoff deals with the problem every day. As a vice president for Crete Carrier Corp., a Nebraska-based trucking company that operates 5,500 trucks across 48 states, his responsibilities include driver training and recruiting. In some years, Aschoff said, the company may hire 300 to 350 drivers a year. "We are always looking to hire," he said. Aschoff also acknowledged the effect this shortage could have on consumers. "It really comes down to simple economics – supply and demand," Aschoff said. "If we're not able to get enough drivers to fill our trucks that we have out there that handle our customer's goods, we're going to have to pay the drivers more to be able to do that. As we pay the drivers more, that cost will have to be transferred throughout the food chain." Supermarket chain Hy-Vee operates 228 stores in eight states in the upper-Midwest. Ruth Comer, spokesperson for Hy-Vee, said the chain could be forced to increase prices because of the trucking shortage. "All of our costs ultimately affect prices," Comer said. "When we have an increased cost in transportation, we try to make adjustments wherever possible in our operating costs to keep costs down for our consumers. But there are times when those costs do show up in our products."

## Driver Shortages Plague Trucking Industry

To minimize the impact of driver shortages, Hy-Vee relies partially on its own drivers for some transport operations. "We try to grow our own work force and plan ahead for those occasions," Comer said. There may be another hidden cost to consumers as well. Thompson said if companies cannot fill these positions more goods may have to be packed into fewer rigs. That could mean that laws regulating the weight trucks can carry on roads would have to be changed to allow heavier loads. For the taxpayer, that could translate into more tax dollars being spent to maintain highways. Maine and Vermont are already experimenting with increased weight allowances. A 2010 fiscal spending bill will allow the states to run a one-year trial program where heavier six-axle trucks can travel on interstate highways inside their borders. Current law bans trucks over 80,000 pounds. The new restrictions would allow trucks weighing 90,000 and 100,000 pounds to travel within Vermont and Maine, respectively. A typical starting salary for new drivers is 33 cents per mile; more experienced drivers can earn up to 39 cents a mile. The American Trucking Association says new drivers expect to earn about \$37,000 a year, and many companies – including Crete Carrier – provide a full range of benefits, including health insurance and a 401K program. Even so, two factors play a big role in the shortage of long-haul drivers: the training and, more importantly, the lifestyle changes that accompany

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long-haul driving. Don Walters, 62, of Amazonia, Mo., has been driving cross-country for 20 years. His wife Laurie, 53, joined him seven years ago when their children left home. They're on the road six days a week now. "We get home, we have enough time to do laundry, mow the yard, do a couple things around the house and then we're back out here doing it again," Don said. And because most drivers are paid by the mile, the couple tries to keep the truck on the road as much as possible. "When I'm driving, he's sleeping, and when he's driving, I'm sleeping," Laurie said. "It's a major life change."

### Tough Lifestyle for Truckers

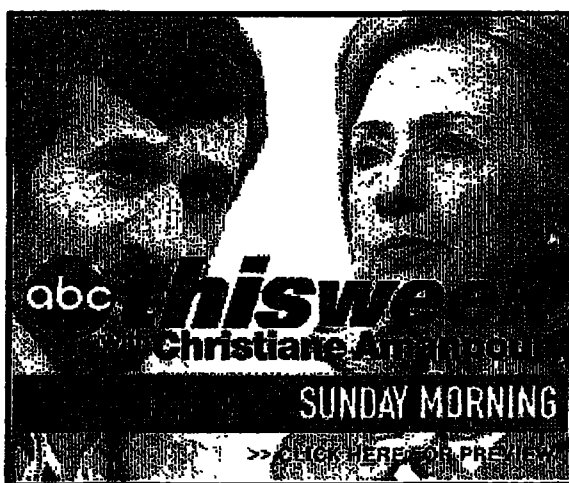
So, why do they do it? Don said it is a profession that has been good to his family. "We're lucky, we've got a job. We can pay our bills," Don said. "There is no threat of losing our house or anything like a lot of people have right now in other professions." Despite the job stability, it is not a lifestyle change that a lot of people are willing to make — or stick with. Aschoff said there is a very high rate of turnover for long-haul drivers because of the lifestyle. "We are constantly hiring to replace that turnover," Aschoff said. "We always want to make sure that the capacity we have and the number of trucks we have we keep full so that we are able to service our customers." But it's not easy to fill that turnover, especially given the training necessary for the required license.

Prospective new drivers pay for their training, which costs at least \$1,000 and can take three months.

"Being a truck driver isn't something that's just somebody off the street can do," said Aschoff. "It does require schooling; it requires a certain amount of training and to understand how to effectively and safely operate the equipment that you're assigned to. There are a number of regulations that apply to our industry, right down to the drivers themselves." The company recruits some of its drivers from a professional driving program at Southeast Community College in Lincoln, Neb. "We're going to teach them how to use a clutch to get the truck to move; we teach them how to negotiate corners, backing, every element of the driving," said Dave Grant, chairman of the Southeast program. And part of the training, Grant added, is to prepare drivers for "the life." "I don't try to gloss over what this job is," he said. But Jerry Foster, 35, a student in Grant's program, said he's prepared. "Right now I have no family, and I figure I can get myself a nice nest egg and settle down later," he said. "I like the guaranteed job from what I hear from the industry — and the money, the money as well." Crete Carrier hopes to find other students like Foster. Aschoff said in order to fill the shortage, the company may expand the number of students they take from programs like the one at Southeast. "We look constantly at ways we can improve our hiring process," Aschoff said. "We do get very good quality

students out of those programs that become good, quality drivers for us."

*ABCNews.com contributor Brandi Kruse is a member of the ABC News on Campus program at the University of Nebraska-Lincoln.*



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| FL    | JACKSONVILLE<br>TAMPA                                           |
| GA    | DORAVILLE                                                       |
| IA    | COUNCIL BLUFFS                                                  |
| IN    | GRIFFITH                                                        |
| IL    | ARGO<br>CHICAGO<br>HEIGHTS<br>DECATUR<br>HODGKINS<br>TEUTOPOLIS |
| KY    | HOPKINSVILLE                                                    |
| MI    | WILLIS<br>TAYLOR                                                |
| NC    | CHARLOTTE<br>WINSTON SALEM                                      |
| NY    | BRONX<br>BUFFALO                                                |
| OH    | BELPRE<br>CINCINNATI<br>COLUMBUS<br>EUCLID                      |
| PA    | MARTINS CREEK<br>PHILADELPHIA<br>WILLIAMSPORT<br>YORK           |
| SC    | SPARTANBURG                                                     |
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**Exhibit 14**

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## **Facilities**

*Many utility companies are requiring utility poles to be stored in close proximity to their service areas. USC's locations meet this requirement in the PA, MD, NJ, DE, and VA marketplace. Both USC locations are close to the I-70 & I-81 interstate hub, permitting outbound trucks to reach service destinations quickly. The company is currently capable of handling 1.5 million cubic feet of utility poles annually and stocking in excess of 6,000 poles at any given time.*

*USC's St. James facility (home of USC Corporate offices) is comprised of 6.1 acres. Serviced by Norfolk Southern Railroad, it has been a pole warehousing and distribution facility for more than 25 years. St. James has serviced Verizon, PPL, Alltel, and others.*

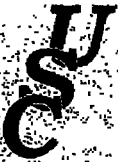


### **Utility Supply Company, Inc.**

*Utility Supply Company, Inc. is a service-oriented company providing direct sales and distribution services of treated wood utility poles to major utility companies, REA's and independent contractors in the northeast United States.*

*Storage & Distribution: Our facility can store in excess of 6,000 poles at any given time. We will store your poles at our yard and ship to your location in the northeast within days.*

*USC offers direct sales of standard size Penta-treated poles from our stock. We offer sale of one pole or annualized procurement.*



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treated wood utility poles



## About

*Utility Supply Company, Inc. (USC) was incorporated in the state of Maryland in 1992 for the purpose of providing warehousing and distribution services of pressure-treated wood utility poles.*

*USC is a "C" corporation and wholly owned by Douglas Mills who is active in the day-to-day operations. The company is strategically located at St. James, MD for servicing all major utility companies within a 200-mile radius of Hagerstown, MD.*

*~next*

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Andre Meyer

**Exhibit 15**

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**Redacted**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**M&G Polymers USA, LLC**

**Complainant**

**v.**

**CSX Transportation, Inc.**

**Defendant**

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)

**Docket No. NOR 42123**

**Joint Reply Verified Statement**

**Of  
Philip H. Burris  
Senior Vice President**

**and**

**Sean D. Nolan  
Vice President**

**L. E. Peabody & Associates, Inc.  
On Behalf of**

**M & G Polymers USA, Inc.**

February 18, 2011

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## **LIST OF EXHIBITS**

| <b><u>EXHIBIT NO.</u></b> | <b><u>EXHIBIT DESCRIPTION</u></b>                                                                                                               |
|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| (1)                       | (2)                                                                                                                                             |
| 1                         | Statement of Qualifications of Philip H. Burris                                                                                                 |
| 2                         | Statement of Qualifications of Sean D. Nolan                                                                                                    |
| 3                         | Determination of CSXT Rail Market Dominance<br>CSXT Rail Margin, less Difference Between Rail<br>Rate and Cost of Providing Alternative Service |
| 4                         | Correction of Errors and Miscalculations to the<br>Verified Statement of Gordon R. Heisler                                                      |

## **I. INTRODUCTION**

We are Philip H. Burris and Sean D. Nolan, Senior Vice President and Vice President, respectively of L. E. Peabody & Associates, Inc., an economic consulting firm that specializes in solving economic, transportation, marketing, financial, accounting and fuel supply problems. Mr. Burris has spent most of his consulting career over thirty-three (33) years evaluating railroad costs, prices, operations, financing, capacity and equipment planning issues. His assignments in these matters were commissioned by railroads, producers, shippers of different commodities, and government departments and agencies. As a part of his work, Mr. Burris has examined pricing for railroad services vis a vis market dynamics and alternative transportation options on numerous occasions, both in litigation and when negotiating railroad rates for either shippers or carriers. Mr. Burris has submitted testimony related to railroad market dominance issues to both the Interstate Commerce Commission and the Surface Transportation Board. A copy of Mr. Burris' credentials are included as Exhibit No. 1 to this reply verified statement ("RVS").

Mr. Nolan has spent his 20 year consulting career evaluating railroad cost of service, pricing and operations issues on behalf of shippers and government departments and agencies. The nature of his work has been supporting shippers in their procurement initiatives including the purchasing of fuel, transportation services, equipment and management of inventories. His development and analysis of alternative scenarios have been supported by tailored financial models used to estimate cost reductions and savings, actual versus budgeted variances, revenue to variable cost of service relationships, cash flows, and break-even and sensitivity analysis. A copy of Mr. Nolan's credentials are included as Exhibit No. 2.



We have been asked by Counsel for M & G Polymers USA, Inc. ("M&G") to review and evaluate the Verified Statement of Gordon R. Heisler, submitted in the above referenced proceeding on January 27, 2011, in support of CSX Transportation, Inc.'s ("CSXT") *Motion of Expedited Determination of Jurisdiction Over the Challenged Rates*. We have also been asked to correct Mr. Heisler's calculations and findings for any theoretical or mathematical errors in the information presented. We were asked to specifically focus on Mr. Heisler's conclusion that effective market competition exists for 32 of the 70 transportation lanes at issue in this proceeding, and Mr. Heisler's underlying premise that if a transportation alternative exists for the issue traffic, at a price close to the price at issue in this proceeding, then CSXT does not have market dominance.

Our Reply testimony is organized below under the following topical headings:

II. Background

III. Effective Competition

IV. Determination of Market Dominance

V. Conclusions

## **II. BACKGROUND**

M&G has production facilities located at Apple Grove, WV and Altamira, Mexico where it produces polyethylene terephthalate ("PET"). M&G ships significant volumes of PET by rail from both of these facilities. Many of M&G's rail shipments are to rail storage facilities located at Belpre, OH, Parkersburg, WV, Sweetwater, TX, Spring, TX, Vado, NM and Rains, SC. The shipments from the Belpre rail storage facility to customers are by both rail and truck.

Apple Grove is M&G's largest production facility, where, due to the physical configuration of the production facilities, all production is loaded into railcars. As explained in the accompanying verified statement of Andre Meyer, the Apple Grove facility cannot load PET directly into trucks, therefore any shipment originating at Apple Grove by truck, must first be loaded into a railcar. The railcar is then switched to a storage track or to a truck transload track, where the product can be transloaded to truck.

The Belpre rail storage facility is owned by Bulkmatic Transport Company ("Bulkmatic"). Belpre receives all of its M&G volumes by rail from either the Apple Grove or from the Altamira facility where it is stored in the railcars until scheduled distribution to M&G customers. M&G product is then shipped from Belpre either by rail or it is transloaded for shipment by truck.

The Parkersburg, Sweetwater, Vado and Spring facilities are rail storage-in-transit facilities which receive rail shipments from Apple Grove or Altamira. All shipments from these three in-transit rail storage facilities are by rail.

M&G has challenged CSXT's rail rates for its portion of the rail shipment of M&G PET moving between 70 origin/destination pairs.<sup>1</sup> The table below summarizes the 70 origin destination pairs at issue in this proceeding by origin.

| <b>Table 1</b><br><b>Issue Traffic</b><br><b><u>Origin/Destination Pairs by Origin</u></b> |                                                                                |
|--------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| <b><u>Origin</u></b><br>(1)                                                                | <b><u>Number of Issue</u></b><br><b><u>Origin/Destination Pairs</u></b><br>(2) |
| Apple Grove, WV                                                                            | 41                                                                             |
| Belpre, OH                                                                                 | 17                                                                             |
| Altamira, MX                                                                               | 6                                                                              |
| Sweetwater, TX                                                                             | 3                                                                              |
| Parkersburg, WV                                                                            | 1                                                                              |
| Spring, TX                                                                                 | 1                                                                              |
| Rains, SC                                                                                  | <u>1</u>                                                                       |
| Total                                                                                      | 70                                                                             |

As shown in the table above, the vast majority of origin/destination pairs included in this proceeding originates at either Apple Grove, WV or Belpre, OH. CSXT receives the shipments originating at Altamira, MX and Sweetwater, TX in interchange at either Chicago or New Orleans and it receives the shipments originating at Spring, TX in interchange at East Saint Louis, MO.

CSXT witness Heisler alleges that for 32 of the 70 issue movements, feasible and cost effective alternatives exist for CSXT's movement of M&G's PET. Mr. Heisler's proffered alternatives are either direct truck shipments between the origin and destination, or a combination truck/rail shipment between origin and destination. Because Mr. Heisler has devised what he believes are feasible alternatives with rates similar to those at issue in this

<sup>1</sup> See Exhibits A and B to M&G's Third Amended Complaint filed February 1, 2011.

proceeding, he concludes that effective competitive constraints exist to CSXT's rail rates for these movements.

### **III. EFFECTIVE COMPETITION**

We have examined the transportation alternatives presented by Mr. Heisler for each of the 32 origin/destination pairs and find that in numerous instances, Mr. Heisler's assumptions and/or calculations are incorrect. More importantly, we find that Mr. Heisler's basic premise that the mere existence of a transportation alternative with rates for that alternative close to the issue rates (either slightly higher or lower) does not, in and of itself, represent a definitive finding of an effective competitive constraint.

In the recent *DuPont* small rate cases, the Board reaffirmed the long-established principal that comparable pricing among modes does not, by itself, constitute effective competition:

Even if we were to find that the cost of trucking the product is similar to the cost of using rail after the CSXT rate increase, it does not follow that the threat of trucking is evidence of effective competition. After all, even a monopolist finds that there is a profit-maximizing price beyond which it cannot raise prices without adversely affecting its bottom line. A carrier possessing market power might set its rates so high that it would begin to lose business to a higher-cost alternative (such as a trucking company). As the Board has previously noted, while this may create an "outer limit" constraint, it does not necessarily mean that effective competition is present.

*E.I. du Pont de Nemours and Company v. CSX Transportation, Inc.*, STB Docket No. 42099 (served June 30, 2008) (underline in original) (footnotes omitted).

Moreover, in *McCarty Farms*, the Interstate Commerce Commission stated: "The existence of intermodal competition is not enough to establish a lack of market dominance" (3 I.C.C. 2d 832), and in *FMC*, the STB stated:

We conclude that the fact that the [carrier] matches prices set by alternatives with significantly higher costs, while maintaining a dominant market share, is not enough to demonstrate effective competition for the traffic at issue. *FMC* 4 S.T.B. 718.

Finally, in *Ariz. Pub. Serv. Co. v. U.S.*, 742 F.2d 644, 650-51 (D.C. Cir. 1984), the court upheld this notion of effective competition:

At the core of the "effective competition" standard is the idea that there are competitive, market pressures on the railroads deterring them from charging monopoly prices for transporting goods. *Of course, any such effective competition will always be relative to a particular price that the railroads charge \*\*\*.* The mere existence of some alternative does not in itself constrain the railroads from charging rates far in excess of the just and reasonable rates that Congress thought the existence of competitive pressures would ensure. (Emphasis in original).

Mr. Heisler's premise fails to address the ability of a monopolist to control the market, through pricing decisions. To draw such a conclusion requires an examination of the economics underlying both the rates at issue and those of the alternative and the margins available to the service providers. For an effective competitive constraint to exist, CSXT's cost of providing the service must be comparable to or greater than that of the cost of providing the alternative service by all carriers and service providers in that supply chain. If this is not the case, and CSXT's costs are substantially lower than that of its competitor, CSXT has the ability to set its rates just below the alternative providers' cost of service, thereby forcing the alternative provider(s) out of that business and allowing CSXT to earn monopoly profits. Analytically this test is determined by performing the following steps:

- 1) Determine CSXT's margin for each rate at issue, i.e., the difference between the rate and CSXT's variable cost of providing the service;
- 2) Determine the cost of providing the alternative service;
- 3) Subtract the cost of the alternative service from the CSXT rate;
- 4) Compare CSXT's margin (Step 1) to the rail rate less the cost of the alternative service (Step 3); and

- 5) If CSXT's margin (Step 1) is greater than Step 3, then the alternative is not an effective constraint on CSXT's pricing and CSXT does have market dominance.

Our findings are that for each of the 32 origin/destination pairs where Mr. Heisler claims an effective competitive constraint exists, the cost of providing the alternative service is substantially more than CSXT's cost of providing the service at issue. Stated differently, we find CSXT's margin from the rates at issue exceed the difference between CSXT's rate on the issue movement and the cost of the alternative service by a substantial margin. Thus, CSXT has sufficient market power to force the competitor out of the market place. The net result is that CSXT is market dominant in each of the 32 issue origin/destination pairs identified by CSXT as having effective competitive constraints. Our methodology is discussed in the balance of this Reply Verified Statement and our findings are summarized in Exhibit No. 3.

#### **IV. DETERMINATION OF MARKET DOMINANCE**

As stated above, a determination of market dominance requires an examination of the economics underlying both the rates at issue and those of the alternative and the margins that can be earned by the defendant carrier. For an effective competitive constraint to exist, CSXT's cost of providing the service must be comparable to or greater than that of the cost of providing the alternative service by all carriers and service providers in that supply chain. Stated differently, if CSXT's margin from the rates at issue, minus the difference between the CSXT rail rate and the cost of providing the alternative service is substantially positive, then the alternative is not an effective constraint on CSXT's pricing and CSXT does have market dominance.

To demonstrate CSXT's market dominance for each of the 32 origin/destination pairs where Mr. Heisler alleges CSXT has an effective competitive alternative, we: 1) determined the rail margin for each origin/destination pair; 2) determined the cost of providing the alternative service; 3) subtracted the cost of the alternative service from the rail rate; and 4) compared the rail margin to the rail rate, less the alternative cost of providing the service. Our procedures and methodology are first discussed generally by topic, i.e., revenue, rail costs, truck costs, transload facility fee and other costs. Then, the specifics of our procedures are discussed under each of the four groups of transportation alternatives proposed by Mr. Heisler, which are:

1. Truck direct from Apple Grove or Belpre to customer;
2. Truck from Apple Grove or Belpre to a rail transload at the current interchange point with the existing connecting rail carrier;
3. Truck from Apple Grove or Belpre to a rail transload at Lima, Ohio on the Chicago, Fort Wayne and Eastern Railroad ("CFER") for delivery to interchange in Chicago with the existing connecting carrier; and
4. Movement by CFER from interchange with existing rail carrier in Chicago to the truck transfer facility in Lima, OH, then truck from Lima to destination.



**A. OVERALL  
METHODOLOGY**

**1. Rail Revenue**

Rail revenue in our analysis is based on the CSXT rates at issue, including the average fuel surcharge applied by CSXT during 4Q2010. This differs slightly from the rail revenues in Mr. Heisler's analysis in that Mr. Heisler includes the rail carrier's fuel surcharge as of January 1, 2011, even though his statement indicates his analysis is as of 4Q2010.<sup>2</sup>

Connecting carrier revenues are included in our analysis in two circumstances. First, for origin/destination pairs where Mr. Heisler has proposed a truck direct to customer alternative, and the existing move includes both CSXT and a connecting carrier, the revenue for the connecting carrier is included in order that a comparison between revenues for the entire move and cost for the entire move can be made. For example, the existing shipment from Apple Grove to Franklin, IN originates on CSXT and is interchanged to the LIRC at Louisville, KY for delivery to Franklin, IN. In order for revenues to be compared with the cost of providing the alternative service from origin to the customer, both CSXT and LIRC revenues must be considered.

Second, in those instances where Mr. Heisler has proposed an alternative that would change a connecting carrier's cost of providing service, this change in cost must be accounted for and compared with the revenues associated with that change in cost. For example, Mr. Heisler proposes a truck/rail alternative for the Apple Grove to Fremont, OH origin/destination pair, which currently moves from Apple Grove to Columbus, OH where it connects with Norfolk Southern Railway ("NS") for delivery to Fremont. Mr. Heisler's proposed alternative changes NS' operation from an "interchange received and terminated" shipment to an "originated and

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<sup>2</sup> Mr. Heisler made several similar errors and miscalculations in the development of Exhibit 1 to his verified statement. These errors and miscalculations are addressed in Exhibit No. 4.

terminated” shipment. The originated and terminated shipment is a more costly service for NS to provide. In performing our analysis, we have incorporated NS’ revenue and its cost of service under both the existing movement and the alternative scenarios in order to accurately reflect the costs of providing the service and the margins realized from providing the service.

## **2. Rail Costs**

For each of the 32 origin/destination pairs we developed CSXT’s Uniform Railroad Costing System (“URCS”) Phase III costs of providing service based on the STB’s 2009 URCS unit costs. In addition, to CSXT variable cost, URCS Phase III costs were developed for connecting carriers included in the analysis where appropriate. URCS costs for NS are based on the STB’s 2009 URCS unit costs for NS. URCS costs for Class II and Class III carriers are based on the STB’s 2009 URCS regional costs. All URCS costs were indexed to 4Q2010.

Connecting carrier variable costs were included in our analysis in three circumstances. First, when Mr. Heisler’s alternative is a truck direct to customer shipment and the existing rail shipment includes both the CSXT and a connecting carrier, that carrier’s costs are calculated. Second, when Mr. Heisler’s proposed alternative changes a connecting carrier’s operation and thereby its cost of providing service, the connecting carrier’s cost of providing service is calculated (e.g. the Apple Grove to Fremont, OH move via a Columbus, OH transload discussed above). Finally, the alternative rail carrier’s cost is calculated for all origin/destination pairs where Mr. Heisler has proposed a rail carrier other than CSXT be included in the shipment, i.e., all shipments which involve movement by CFER between Lima, OH and Chicago, IL.

## **3. Truck Costs**

Marginal truck costs were developed for each of Mr. Heisler’s alternatives based on the truck cost per mile found in the December 2008 report titled *An Analysis of the Operational*

*Costs of Trucking*, by the American Transportation Research Institute (“ATRI”). This report provides a marginal cost per mile for the Motor Carrier industry of \$1.73 per loaded or empty mile for truckload, less-than-truckload and specialty carriers combined. The \$1.73 cost per mile was indexed from annual 2008 expenses to 4Q2010 using the Producer Price Index for “Truck Transportation” which produces a cost per mile at 4Q2010 levels of \$1.70.<sup>3</sup> The \$1.70 marginal cost per mile was applied to the truck miles found in Mr. Heisler’s workpapers for each origin/destination pair and increased to reflect a 100 percent empty backhaul.<sup>4</sup>

In addition to the motor carrier rates, Mr. Heisler includes motor carrier charges for rail to truck transloads and for truck cleaning in his analysis. Rather than adopting these charges in our motor carrier cost analysis we have estimated the carriers’ cost of providing this service. To estimate the cost of transfer service we accepted the driver’s wage cost, including benefits, and bonuses per hour from the ATRI Report, indexed to 4Q2010 wage and price levels, multiplied by [REDACTED] hours for transload activities as reported by Mr. Heisler. This yields a cost per transload of [REDACTED] compared with the transload charges used in Mr. Heisler’s analysis of [REDACTED] to [REDACTED] per transload.

Mr. Heisler also includes charges of [REDACTED] per truckload for truck cleaning in his analysis. The charge for cleaning a truck is [REDACTED], however, Mr. Heisler states that trucks

<sup>3</sup> As recognized in the ATRI Report, the \$1.70 marginal cost per mile understates the actual cost incurred by specialized motor carriers. The Report indicates at several locations that costs for specialty carriers are greater than the industry average. For instance at page 16, the report indicates that wages for drivers of specialty carriers are paid 28 percent more than the average compensation. In addition, at page 13, the Report acknowledges that specialized carriers operate more expensive, specially-engineered equipment and have a significantly higher cost per mile than the truckload and less-than-truckload sectors. Further refinement of the specialized motor carrier marginal cost per mile will be evaluated in M&G’s Opening Evidence.

<sup>4</sup> Specialized carriers such as those operating self-loading and unloading pneumatic/vacuum trailers have little to no opportunity for loaded backhaul shipments and as a result typically operate with a 100 percent empty backhaul. This would be especially true for the operations proposed by Mr. Heisler which requires an increase of [REDACTED] truckloads operating between the issue movement origin/destination pairs or transload facilities.

require cleaning [REDACTED] hence a cost per truckload of [REDACTED].<sup>5</sup> Based on the labor costs for cleaners of vehicles and equipment as reported by the Bureau of Labor statistics, and an assumption that [REDACTED] persons working [REDACTED] hours are required to clean a self-loading and unloading pneumatic/vacuum trailer, the cost of labor of cleaning equals [REDACTED] per trailer, or [REDACTED] per truckload when the trailer is cleaned every [REDACTED] load.

#### **4. Transfer Facility Fee**

Mr. Heisler includes transfer facility fees for each of the truck transload facilities ranging from [REDACTED] to [REDACTED] per railcar based on information provided by the individual transfer facilities or their tariffs. These charges typically include a [REDACTED]  
[REDACTED] We have accepted Mr. Heisler's transfer facility charges, making corrections to reflect errors in his calculations. The corrections are addressed on an individual movement basis in the specific application section below.

#### **5. Other Costs**

In addition to the costs addressed above, two other costs are included in our analysis. First, Mr. Heisler's proposed transportation alternatives require a substantial increase in the number of truckloads originating at M&G's Apple Grove production facility. As fully addressed in the accompanying verified statement of M&G witness Andre Meyer, the proposed increase in truck originations requires an expansion of the truck transload facilities at Apple Grove and a significant change in operations in the rail operations at the plant. To some extent, the change in operations will require loaded railcars to be switched from the high volume production side of the Apple Grove plant to the expanded truck transload facility and empty cars to be switched

<sup>5</sup> M&G confirms it requires trucks be cleaned every [REDACTED] loads and cleaned with every change in commodity transported. Assuming these trailers are used in continuous service for moving PET, truck cleaning every five loads is adequate.

back from the truck transload facility to the high volume production side of the plant for reloading.

As the high volume production section of the Apple Grove plant and the location of the expanded truck transload facility, as proposed by Mr. Heisler, are separated by the CSXT mainline track, CSXT must perform this switch operation. Mr. Heisler's proposed transportation alternatives require an additional [REDACTED] loaded railcars be transloaded to truck at Apple Grove. M&G personnel, conservatively estimate (without the time to perform a thorough assessment of the operations changes required) that CSXT will have to switch [REDACTED] loaded railcars from the high production section of the plant to the transload facility and [REDACTED] empty railcars back from the transload facility. Currently, CSXT provides minimal intraplant switching at Apple Grove, however, if CSXT is required to switch cars on an ongoing basis, (especially if this service is a result of the diversion of traffic and profits away from CSXT) it is highly likely that CSXT will charge for this intraplant switch service. CSXT's current intraplant switch charge is \$175 per car switched, loaded or empty. We have included the CSXT charge for intraplant switching service in our analysis for [REDACTED] railcars annually and distributed that cost on a per loaded car basis to each of the [REDACTED] cars Mr. Heisler proposes to divert to truck origination at the Apple Grove plant. This results in a charge of [REDACTED] per carload.<sup>6</sup>

Second, Mr. Heisler proposes to divert shipments moving to and from interchange in Chicago between CSXT and connecting carriers to a connection between the CFER and connecting carriers in Chicago. These connecting carriers include BNSF Railway Company

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<sup>6</sup> M&G's assumption that the CSXT switch charge will apply to [REDACTED] of the [REDACTED] cars diverted to truck originations may be revised after a study is performed of the impact of this diversion on operations at the Apple Grove plant. Moreover, the [REDACTED] per railcar load does not include the cost of the expansion of the truck transload facility at Apple Grove, which Mr. Heisler claims to equal only [REDACTED]

("BNSF"), Union Pacific Railroad Company ("UP"), Canadian National Railway Company ("CN") and Canadian Pacific ("CP").

The CFER destination in Chicago is Indiana Harbor Belt's ("IHB") Blue Island yard. CFER does not directly interchange with any of CSXT connecting carriers for shipments of M&G PET, instead IHB provides an intraterminal switch effecting this interchange within the Chicago switching district. For this service, IHB charges a \$138 switch fee for loaded or empty cars. Mr. Heisler's workpapers indicate that the [REDACTED]

[REDACTED] However, close examination of Mr. Heisler's workpapers reveals [REDACTED]

[REDACTED]

As a result, our analysis adds the [REDACTED] to the movements with required connection between CFER and [REDACTED] or [REDACTED] in Chicago.

## **B. SPECIFIC APPLICATION TO INDIVIDUAL ORIGIN/DESTINATION PAIRS**

The specific application of our methodology to individual origin/destination pairs is discussed below and is organized under each of the four categories of transportation alternatives proposed by Mr. Heisler.

### **1. Truck Direct to Customer**

Mr. Heisler proposes that shipments for twelve origin/destination pairs can be moved by truck from origin to destination. Of these twelve origin/destination pairs, 10 originate at Apple Grove and 2 originate at the Belpre rail storage facility. The highway distance for these twelve origin/destination pairs range from [REDACTED] miles to [REDACTED] miles, and according to Mr. Heisler these origin/destination pairs represent [REDACTED] rail car shipments in 2009 or [REDACTED]

truckloads.<sup>7</sup> The rail route of movement for [REDACTED] of these origin/destination pairs involves CSXT and a connecting carrier.

Mr. Heisler contends that a truck direct to customer movement is a “logistically feasible and economically competitive” alternative for the existing rail movement for each of these twelve origin/destination pairs. Further, Mr. Heisler contends that for [REDACTED] of the origin/destination pairs the truck direct rate is less than the current rail rate and for the remaining [REDACTED] origin/destination pairs the truck rate is only slightly higher than the rail rate. Mr. Heisler therefore concludes that the truck alternative acts as a competitive constraint on CSXT’s rail rates.

The table below lists each of the twelve origin destination pairs for which Mr. Heisler alleges a viable and economically competitive truck direct move exists. The table also shows the existing rail rates and costs for the issue movements to destination and the costs of the direct truck alternative. As shown in the table the cost of the truck alternative is up to 3.7 times higher than that of the rail alternative. Most importantly, the table shows that the margin from the rail rate is substantially greater than the rail rate, less the cost of the truck alternative.

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<sup>7</sup> For purposes of our analysis we accept Mr. Heisler’s assumption that four truckloads are equal to one railcar equivalent.

**Table 2**  
**Truck Direct to Customer Alternatives**

| <u>Lane No.</u><br>(1) | <u>Origin/<br/>Destination</u><br>(2) | <u>Rail Rate</u><br>(3) | <u>Rail Cost</u><br>(4) | <u>Truck<br/>Alt Cost</u><br>(5) | <u>Alt Cost/<br/>Rail Cost 1/</u><br>(6) | <u>Rail<br/>Margin 2/</u><br>(7) | <u>Rail Rate<br/>less Alt Cost 3/</u><br>(8) | <u>Difference 4/</u><br>(9) |
|------------------------|---------------------------------------|-------------------------|-------------------------|----------------------------------|------------------------------------------|----------------------------------|----------------------------------------------|-----------------------------|
| 14b                    | APG/Franklin, IN                      |                         | \$1,409                 | \$4,132                          | 2.9                                      |                                  |                                              |                             |
| 4a                     | APG/Clifton Forge, VA                 |                         | \$1,112                 | \$3,017                          | 2.7                                      |                                  |                                              |                             |
| 8a                     | APG/Parkersburg, WV                   |                         | \$805                   | \$1,290                          | 1.6                                      |                                  |                                              |                             |
| 1a                     | APG/Belpre, OH                        |                         | \$807                   | \$1,290                          | 1.6                                      |                                  |                                              |                             |
| 35b                    | APG/Waynesville, NC                   |                         | \$2,022                 | \$5,070                          | 2.5                                      |                                  |                                              |                             |
| 20b                    | APG/Hebron, OH                        |                         | \$1,035                 | \$2,174                          | 2.1                                      |                                  |                                              |                             |
| 10a                    | APG/Rochester, NY                     |                         | \$1,704                 | \$7,219                          | 4.2                                      |                                  |                                              |                             |
| 14a                    | Belpre/Devon, KY                      |                         | \$1,177                 | \$3,083                          | 2.6                                      |                                  |                                              |                             |
| 35b                    | Belpre/Franklin, IN                   |                         | \$1,598                 | \$4,266                          | 2.7                                      |                                  |                                              |                             |
| 5a                     | APG/Devon, KY                         |                         | \$1,009                 | \$2,772                          | 2.7                                      |                                  |                                              |                             |
| 8b                     | APG/Allentown, PA                     |                         | \$1,797                 | \$6,716                          | 3.7                                      |                                  |                                              |                             |
| 18b                    | APG/Havre de Grace, MD                |                         | \$1,773                 | \$6,172                          | 3.5                                      |                                  |                                              |                             |

1/ Column 5 – Column 4

2/ Column 3 – Column 4.

3/ Column 3 – Column 5

4/ Column 7 – Column 8

The rail cost associated with each origin/destination pair is significantly less than the alternative cost of providing service; and the difference between the rail margin and the rail rate minus the cost of providing the alternative service is significant. Thus CSXT has market dominance over each of these origin/destination pairs.

As discussed in the previous section, all the rates and costs are shown at 4Q2010 levels. Rail shipments to Franklin, IN, Waynesville, SC, Hebron, OH, Allentown, PA and Harve de Grace, MD are joint line moves, where CSXT is the originating carrier. As the truck rates proposed by Mr. Heisler are rates to destination, not interchange, the rail revenues and rail costs shown in the table above include both CSXT and the connecting carriers' data.

The rail costs are based on the STB's 2009 URCS unit costs and its Phase III cost program. Costs for the alternative transportation include truck cost, truck transload and truck cleaning costs, transload facility fees and the incremental CSXT switch fees at Apple Grove discussed in the previous section.



Two of Mr. Heisler's proposed alternatives are 71-mile truck direct moves from Apple Grove to the rail storage facilities at Belpre, OH and Parkersburg, WV. While both of these moves are a relatively short distance, they represent moves to rail storage facilities where M&G stores PET in railcars until the customer requires order fulfillment. From Belpre PET is shipped either by rail or truck, from Parkersburg all outbound shipments are by rail. Mr. Heisler fails to recognize that his proposed truck moves to Belpre and Parkersburg require PET to be loaded into railcars at Apple Grove, transloaded to truck at Apple Grove, moved by truck to either Belpre or Parkersburg and then *reloaded* into railcars for storage until such time as the customer requires delivery. Mr. Heisler also fails to account for the fact that M&G would have to position empty railcars at Belpre and Parkersburg to receive the product shipped by truck to these storage facilities.

## **2. Truck to Current Interchange Location for Transload**

Mr. Heisler claims that M&G has competitive alternatives to CSXT's rail rates for six origin/destination pairs by moving product by truck from either Apple Grove or Belpre to transload facilities located where CSXT currently connects with the delivering carrier. Specifically, Mr. Heisler claims M&G could move PET from Apple Grove and Belpre by truck to Hagerstown, MD for transload to NS for delivery to the customer, and from Apple Grove to Columbus, OH for transload to NS for delivery to the customer. Mr. Heisler concludes that in all six instances the rate for the alternative service is less than that for the existing service and therefore the alternative service effectively constrains CSXT's pricing.

As with the truck direct to customer alternatives proposed by Mr. Heisler the truck to transload at existing interchange locations is not economically feasible as the cost of providing the alternative service far exceeds the cost of providing the existing rail service.

The table below summarizes the comparative economics of the existing rail service and Mr. Heisler's proposed truck transload alternatives for each of these six origin/destination pairs.

**Table 3**  
**Truck Transload to Connecting Carrier at Existing Rail Interchange Location**

| <u>Lane No.</u> | <u>Origin/<br/>Destination</u> | <u>Rail Rate</u> | <u>Rail Cost</u> | <u>Truck/Rail<br/>Alt Cost</u> | <u>Alt Cost/<br/>Rail Cost 1/</u> | <u>Rail<br/>Margin 2/</u> | <u>Rail Rate<br/>less Alt Cost 3/</u> | <u>Difference 4/</u> |
|-----------------|--------------------------------|------------------|------------------|--------------------------------|-----------------------------------|---------------------------|---------------------------------------|----------------------|
| (1)             | (2)                            | (3)              | (4)              | (5)                            | (6)                               | (7)                       | (8)                                   | (9)                  |
| 8b              | APG/Allentown, PA              |                  | \$1,797          | \$5,868                        | 3.3                               |                           |                                       |                      |
| 18b             | APG/Havre de Grace, MD         |                  | \$1,773          | \$5,836                        | 3.3                               |                           |                                       |                      |
| 19b             | APG/Hazleton, PA               |                  | \$1,917          | \$5,988                        | 3.1                               |                           |                                       |                      |
| 37b             | Belpre/Allentown PA            |                  | \$1,613          | \$4,911                        | 3.0                               |                           |                                       |                      |
| 15b             | APG/Fremont, OH                |                  | \$1,183          | \$3,124                        | 2.6                               |                           |                                       |                      |
| 24b             | APG/Nicholasville, KY          |                  | \$1,420          | \$3,361                        | 2.4                               |                           |                                       |                      |

1/ Column 5 + Column 4

2/ Column 3 - Column 4

3/ Column 3 - Column 5.

4/ Column 7 - Column 8

Mr. Heisler's proposed alternatives require a change in operations for NS at both the existing interchange locations, i.e., under the proposed alternative, rather than receiving loaded railcars from CSXT in interchange, NS will originate railcars at the transload facilities. Because of this change in the cost of providing service, our analysis includes both the rail rate from origin to destination and the rail cost from origin to destination for both the existing rail service and the proposed alternative service.

As shown in the table above, the rail cost associated with each origin/destination pair is significantly less than the alternative cost of providing service. Further, the difference between the rail margin and the rail rate minus the cost of providing the alternative service is significant. Thus CSXT has market dominance over each of these origin/destination pairs.

In addition to CSXT having a significant economic advantage over Mr. Heisler's proposed alternatives for these six origin/destination pairs, several of Mr. Heisler's assumptions

regarding the Hagerstown transload alternative are ill-founded and incorrect.<sup>8</sup> First, Mr. Heisler proposes that Utility Supply Company, a utility pole transload facility, provide the necessary facility for transload of M&G's PET from truck to railcar on NS' rail line. As fully discussed in the accompanying statement of Mr. Meyer, Utility Supply Company's property is not suitable for transloading M&G's PET from bulk truck to railcars.

Second, Mr. Heisler incorrectly assumes that NS will move a railcar of M&G's PET which originates at the [St. James transload facility to destination for the same rate that it would] move a railcar it receives in interchange from CSXT at Hagerstown. However, Mr. Heisler admits that the NS Rule 11 rate that applies to railcars received from CSXT at Hagerstown would not cover rates from the Utility Supply facility. However, Mr. Heisler states that in his experience, it is *extremely likely* that M&G would be able to secure the same or a very similar contract rate for railcars originating at a transload facility located just 1.5 miles away from Vardo.<sup>9</sup> The fact is, however, that NS is not willing to provide M&G with the same rate for cars originating at Utility Supply Company in St. James. As indicated in the statement of Mr. Meyer, NS has provided a quote for moving railcars from the Utility Supply Company in St. James equal to [REDACTED] more per carload than its existing rate for moving M&G's PET from interchange with CSXT in Hagerstown. Mr. Heisler's conclusion that the truck transload/NS rate for moving M&G's PET via the Hagerstown transload is less than the existing rail rate is incorrect.

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<sup>8</sup> These include the Apple Grove and Belpre to Allentown, PA and Apple Grove to Havre de Grace, MD and Hazelton, PA origin/destination pairs.

<sup>9</sup> Heisler VS at p. 12, note 8. (Emphasis added). Mr. Heisler indicates that Utility Supply Company's transload facility is located in Hagerstown, MD where the existing interchange between CSXT and NS takes place. In actuality Utility Supply Company is located six miles south of Hagerstown in St. James, MD.

**3. Truck from Origin to Lima, OH Transload to CFER**

Twelve of the issue origin/destination pairs originate at Apple Grove and move via CSXT to interchange with Western carriers in Chicago. Mr. Heisler proposes a truck/rail alternative for the CSXT portion of the move which assumes shipments will originate by truck at Apple Grove and move a highway distance of [REDACTED] miles to Lima, OH where M&G PET would transload to railcars on the CFER. CFER would then transport the railcars to connection with the same Western carriers in Chicago that currently participate in the issue movements. The table below summarizes the comparative economics of the CSXT move from Apple Grove to connection with the Western carriers in Chicago and Mr. Heisler's proposed truck/CFER move through the Lima, OH transload. As shown in the table, CSXT's cost associated with each origin/destination pair is significantly less than the cost of Mr. Heisler's proposed alternative service. Further, the difference between the rail margin and the CSXT rail rate minus the cost of providing the alternative service is significant. Thus CSXT has market dominance over each of these origin/destination pairs.

**Table 4**  
**Truck to Transload in Lima, OH and CFER Connection in Chicago**

| <u>Lane No.</u> | <u>Origin/Destination</u> | <u>CSXT<br/>Rail Rate</u> | <u>CSXT<br/>Rail Cost</u> | <u>Truck/Rail<br/>Alt Cost</u> | <u>Alt Cost/<br/>Rail Cost 1/</u> | <u>CSXT<br/>Margin 2/</u> | <u>CSXT Rate<br/>less Alt Cost 3/</u> | <u>Difference 4/</u> |
|-----------------|---------------------------|---------------------------|---------------------------|--------------------------------|-----------------------------------|---------------------------|---------------------------------------|----------------------|
| (1)             | (2)                       | (3)                       | (4)                       | (5)                            | (6)                               | (7)                       | (8)                                   | (9)                  |
| 21b             | APG/Lenexa, KS            | \$5,646                   | \$1,325                   | \$4,142                        | 3.1                               | \$4,321                   | \$1,504                               | \$2,817              |
| 30b             | APG/Sweetwater, TX        | \$5,646                   | \$1,323                   | \$4,140                        | 3.1                               | \$4,323                   | \$1,506                               | \$2,817              |
| 32b             | APG/University Park, IL   | \$5,646                   | \$1,330                   | \$4,287                        | 3.2                               | \$4,316                   | \$1,359                               | \$2,957              |
| 10b             | APG/Champagne, IL         | \$5,646                   | \$1,328                   | \$4,283                        | 3.2                               | \$4,318                   | \$1,363                               | \$2,955              |
| 22b             | APG/Little Rock, AR       | \$5,646                   | \$1,324                   | \$4,141                        | 3.1                               | \$4,322                   | \$1,505                               | \$2,817              |
| 25b             | APG/Rockford, IL          | \$5,646                   | \$1,329                   | \$4,283                        | 3.2                               | \$4,317                   | \$1,363                               | \$2,955              |
| 16b             | APG/Glendale, AZ          | \$5,646                   | \$1,322                   | \$4,139                        | 3.1                               | \$4,324                   | \$1,507                               | \$2,818              |
| 34b             | APG/West Chicago, IL      | \$5,646                   | \$1,330                   | \$4,148                        | 3.1                               | \$4,316                   | \$1,498                               | \$2,818              |
| 7b              | APG/Aquila, AZ            | \$5,646                   | \$1,322                   | \$4,139                        | 3.1                               | \$4,324                   | \$1,506                               | \$2,818              |
| 9b              | APG/Altamira, TM          | \$5,646                   | \$1,321                   | \$4,139                        | 3.1                               | \$4,324                   | \$1,507                               | \$2,818              |
| 26b             | APG/Rogers, MN            | \$5,646                   | \$1,325                   | \$4,142                        | 3.1                               | \$4,321                   | \$1,504                               | \$2,817              |
| 33b             | APG/Vado, NM              | \$5,646                   | \$1,322                   | \$4,140                        | 3.1                               | \$4,324                   | \$1,506                               | \$2,818              |

1/ Column 5 ÷ Column 4.

2/ Column 3 – Column 4.

3/ Column 3 – Column 5.

4/ Column 7 – Column 8.

In addition to CSXT having a significant economic advantage over Mr. Heisler's proposed alternatives for these twelve origin/destination pairs, we have corrected several of Mr. Heisler's assumptions regarding the Lima, OH/CFER transload alternative. First, for each of the moves we increased the transfer facility fee per railcar load from [REDACTED] to [REDACTED] based on information provided to [REDACTED]. The additional cost is related to lease payments to [REDACTED] for the proposed transload operation to be performed in Lima on an ongoing basis.<sup>10</sup> In addition, Mr. Heisler's workpaper shows a [REDACTED] spot at the Lima transload facility, however, the email supporting this charge is for a three-car spot. We have increased the rental fee to [REDACTED].<sup>11</sup>

<sup>10</sup> [REDACTED]

<sup>11</sup> [REDACTED]

As discussed earlier, the CFER operations terminate at the IHB Blue Island yard in Chicago and the CFER does not directly interchange with BNSF, UP, CP or CN. Instead, IHB provides interchange services between CFER and these Western carriers. Per CFER's email to Mr. Heisler, CFER's rate for shipments from the Lima transload to Chicago include the IHB switch charge for connections with BNSF and UP, but there is no mention of the rate including the switch charge for interchange with CN and CP. We have added this switch charge to the issue origin/destination pairs that connect with these two carriers, i.e., shipments terminating at University Park, Champaign and Rockford, IL.

It should also be noted that CFER leases its right-of-way from CSXT for approximately [REDACTED] annually.<sup>12</sup> In addition, [REDACTED] Neither of these costs are reflected in the URCS costs attributed to the CFER alternatives in our analysis.

#### **4. CFER to Lima, OH Transload to Destination**

Four of the issue origin/destination pairs originate on Western carriers and connect with CSXT in Chicago for furtherance to destination. Mr. Heisler proposes the same CFER Lima, OH truck transload operation for these origin/destination pairs as proposed for the twelve origin/destination pairs discussed in the previous section, only in the reverse order, i.e., CFER receives the loaded railcars in Blue Island yard in Chicago and moves them to the Lima transload site, where the PET is transloaded to bulk truck then moved by truck to destination.

As shown in the table, CSXT's cost associated with each origin/destination pair is significantly less than the cost of the alternative service. Further, the difference between the rail

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<sup>12</sup> This amount is comprised of two components, [REDACTED]

margin and the CSXT rail rate minus the cost of providing the alternative service is significant.

Thus CSXT has market dominance over each of these origin/destination pairs.

**Table 5**  
**Connection with CFER in Chicago and Transload to Truck in Lima, OH**

| <b><u>Lane No.</u></b><br>(1) | <b><u>Origin/Destination</u></b><br>(2) | <b><u>CSXT<br/>Rail Rate</u></b><br>(3) | <b><u>CSXT<br/>Rail Cost</u></b><br>(4) | <b><u>Truck/Rail<br/>Alt Cost</u></b><br>(5) | <b><u>Alt Cost/<br/>Rail Cost 1/</u></b><br>(6) | <b><u>CSXT<br/>Margin 2/</u></b><br>(7) | <b><u>CSXT Rate<br/>less Alt Cost 3/</u></b><br>(8) | <b><u>Difference 4/</u></b><br>(9) |
|-------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|----------------------------------------------|-------------------------------------------------|-----------------------------------------|-----------------------------------------------------|------------------------------------|
| 3b                            | Altamira/Cambridge, OH                  | \$5,864                                 | \$1,193                                 | \$3,417                                      | 2.9                                             | \$4,671                                 | \$2,447                                             | \$2,224                            |
| 2b                            | Altamira/Belpre, OH                     | \$5,633                                 | \$1,509                                 | \$3,852                                      | 2.6                                             | \$4,124                                 | \$1,781                                             | \$2,343                            |
| 1b                            | Altamira/Apple Grove                    | \$5,699                                 | \$1,321                                 | \$4,139                                      | 3.1                                             | \$4,377                                 | \$1,560                                             | \$2,818                            |
| 48b                           | Sweetwater/Apple Grove                  | \$5,699                                 | \$1,323                                 | \$4,140                                      | 3.1                                             | \$4,376                                 | \$1,559                                             | \$2,817                            |

1/ Column 5 – Column 4.

2/ Column 3 – Column 4

3/ Column 3 – Column 5

4/ Column 7 – Column 8

The same adjustments were made to the costs for these four origin/destination pairs as were made to the twelve origin/destination pairs discussed in the previous section.

**V. CONCLUSION**

Our analysis of the economics of the issue traffic rates and CSXT's existing operations with those of Mr. Heisler's proposed alternatives, demonstrate that CSXT's margin from the rates at issue exceed the difference between CSXT's rate on the issue movement and the cost of the alternative service by a substantial margin. Thus, CSXT has sufficient market power to force the competitor out of the market place. The net result is that CSXT is market dominant in each of the 32 issue lanes where CSXT claims that an effective competitive alternative exists.

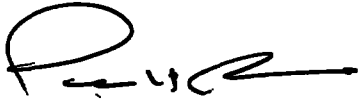


**VERIFICATION**


COMMONWEALTH OF VIRGINIA     )  
                                                      )  
CITY OF ALEXANDRIA                )

I, PHILIP H. BURRIS, verify under penalty of perjury that I have read the foregoing  
Verified Statement of Philip H. Burris, that I know the contents thereof, and that the same are  
true and correct. Further, I certify that I am qualified and authorized to file this statement.



  
\_\_\_\_\_  
Philip H. Burris

Sworn to and subscribed  
before me this 18<sup>th</sup> day of February, 2011

  
\_\_\_\_\_  
Diane R. Kavounis  
Notary Public for the State of Virginia

My Commission Expires: November 30, 2012  
Registration Number: 7160645

**VERIFICATION**

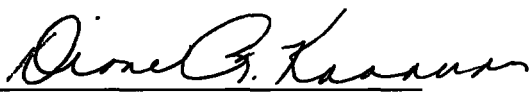
COMMONWEALTH OF VIRGINIA     )  
                                                           )  
CITY OF ALEXANDRIA                 )

I, SEAN D. NOLAN, verify under penalty of perjury that I have read the foregoing Verified Statement of Sean D. Nolan, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.



  
Sean D. Nolan

Sworn to and subscribed  
before me this 18<sup>th</sup> day of February, 2011

  
Diane R. Kavounis  
Notary Public for the State of Virginia

My Commission Expires: November 30, 2012  
Registration Number: 7160645

**STATEMENT OF QUALIFICATIONS**

My name is Philip H. Burris. I am an economist and Senior Vice President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314; 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737; and 21 Founders Way, Queensbury, New York 85737.

I am a graduate of Virginia Polytechnic Institute and State University from which I received a Bachelor of Science degree in Business Administration. I am also a graduate of The American University from which I received a Masters of Business Administration degree, specializing in Transportation.

I have thirty-three (33) years experience in the field of transportation economics as it pertains to transportation supply alternatives, plant location analysis, regulatory policy and dispute resolution before regulatory agencies as well as state and federal courts. I have designed, directed and executed analyses of the costs of moving various commodities by different modes of transportation including rail, barge, truck, air, pipeline and intermodal. The commodities considered in these studies included coal, phosphorus, soda ash, grain, automobiles, cold rolled steel, iron ore, limestone, copper coil and sheet, pulpwood, woodchips and water.

I have examined pricing for railroad services vis-à-vis market dynamics and alternative transportation options on numerous occasions, both in litigation and when negotiating railroad rates for either shippers or carriers. I have submitted testimony related to market dominance Issues to both the Interstate Commerce Commission ("ICC") and the Surface Transportation Board ("STB").

**STATEMENT OF QUALIFICATIONS**

I have performed economic analyses of maximum reasonable rate levels for the movement of coal, phosphorus, soda ash, grain and water using the STB's Constrained Market Pricing ("CMP") standard and specifically the stand-alone cost constraint. I have submitted evidence regarding maximum reasonable rate levels using the stand-alone cost constraint to the STB, it's predecessor, the ICC and the State of Colorado District Court for the City and County of Denver. L. E. Peabody & Associates, Inc. has participated in the development of the stand-alone cost constraint and has submitted testimony to the Commission using the stand-alone cost constraint on behalf of shippers in every STB and ICC proceeding where CMP has been used.

In addition to development of cost of moving various commodities by different modes of transportation, I have performed evaluations of the economic viability and financial health of short line railroads. These studies were performed on behalf of state agencies to determine the financial viability of the railroads or on behalf of investors considering the purchase and operation of short line railroads. I have also conducted studies of railcar lease and purchase options and negotiated rate reductions on behalf of shippers resulting from the use of shipper provided equipment. I have determined both the costs and profits attributable to the performance of services subject to specific transportation contracts. I have performed studies and written draft reports for the Railroad Accounting Principles Board, an independent body created by Congress to establish cost accounting principles for use in implementing the regulatory provisions of the Staggers Act of 1980.

The transportation studies I have designed and executed have been commissioned for the purpose of negotiating with transportation companies, for use in dispute resolution before

**STATEMENT OF QUALIFICATIONS**

various regulatory agencies and state and federal courts and on behalf of electric utility companies in prudency examination. I have testified before the STB, the ICC, the Railroad Commission of Texas, the Colorado Public Utilities Commission, the Illinois Commerce Commission, the Public Service Commission of Nevada, various state and federal courts and arbitration panels. I have also negotiated transportation rates and service on behalf of shipper clients.

I have worked in the consulting industry for a period of thirty-three (33) years. In addition to my current position as a Senior Vice President of L. E. Peabody & Associates, Inc., I have been an employee of the following consulting firms; A. T. Kearney, Wyer Dick & Associates, Inc. and George C. Shaffer & Associates.

**TESTIMONY AND PUBLICATIONS**

STB Docket No. 42113, Arizona Electric Power Cooperative v. The BNSF Railway Company and Union Pacific Railroad Company, January 25, 2010 and July 1, 2010.

STB Docket No. 42110, Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc., August 31, 2009 and April 15, 2010.

Arbitration Proceedings, New Page Wisconsin System, Inc v. Canadian National Railway Company and Wisconsin Central, Ltd. Confidential Contract No. FWV-C-0001, July 25, 2008, August 20, 2008 and October 29, 2009.

United States District Court, Eastern District of Louisiana Civil Action No. 08-1666 Section "I" (4), New Orleans and Gulf Coast Railway Company v. Delta Terminal Services, L.L.C., et al, February 27, 2009 and March 26, 2009.

STB Docket No. 42088, Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, April 19, 2005, July 20, 2005, October 3, 2005, May 13, 2008 and August 15, 2008.

STB Docket No. 41191 (Sub-No. 1), AEP Texas North v. BNSF Railway Company, March 1, 2004, July 27, 2004, May 15, 2006 and July 14, 2006.

STB Docket No. 42071, Otter Tail Power Company v. Burlington Northern and Santa Fe Railway Company, June 13, 2003, October 8, 2003, January 9, 2004, April 29, 2004, March 1, 2005 and April 4, 2005.

STB Docket No. 42058, Arizona Electric Power Cooperative v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, July 3, 2003 and April 2, 2004.

STB Docket No. 42057, Xcel Energy d/b/a, Public Service of Colorado v. The Burlington Northern and Santa Fe Railway Company, January 10, 2003 and May 19, 2003.

U. S. District Court for the Northern District of Illinois Eastern Division, Case No. 02 C 2850, Heartland Rail Corporation v. Railroad Development Corporation, Depositions on November 8, 2002 and January 3, 2003.

American Arbitration Association, Case No. 16 199 00356 02, CSX Transportation, Inc. and Baltimore and Ohio Terminal Company v South Central Florida Express, July 8, 2002.

**TESTIMONY AND PUBLICATIONS**

STB Docket No. WCC-101, Government of the Territory of Guam v. Sea-Land Service, Inc. and Matson Navigation Company, Inc., April 23, 2002 and June 17, 2002.

STB Docket No. 42054, PPL Montana, LLC v. The Burlington Northern and Santa Fe Railway Company, December 14, 2000 and May 7, 2001.

STB Docket No. 42051, Wisconsin Power and Light v. Union Pacific Railroad Company; September 28, 2000.

STB Docket No. 42022, FMC Corporation and FMC Wyoming Company v. Union Pacific Railroad Company; January 15, 1999, March 31, 1999 and April 30, 1999.

Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc. Norfolk Southern Corporation and Norfolk Railway Company - - Central and Operating Lease/Agreement - - Conrail Inc. and Consolidated Rail Corporation; October 21, 1997, February 2, 1998 and July 14, 2000.

Finance Docket No. 33290, Nevada Public Service Commission, Sault Ste. Marie Bridge Co... Acquisition Exemption —Lines of Union Pacific Railroad Company; January and September 1997

Nevada Public Service Commission, Docket Nos. 95-7021, 95-5062, 95-5063; Nevada Power Company; March 1996 and September 1996.

Nevada Public Service Commission, Nevada Power Company, Docket Nos. 95-7021, 95-5062, 95-5063, March 1996.

U.S. District Court for the Northern District of Iowa, Eastern Division, Case No. C91-2086; Rail Intermodal Specialist, Inc. vs. General Electric Capital Corporation; February 1994 and May 1995.

State of Colorado District Court, City and County of Denver, Case No. CV 13042; Bear Creek Water and Sanitation District, et al. vs. The City and County of Denver; July 1992 and April 1993.

Illinois Commerce Commission Docket 89-0351; Reconciliation of Revenues Collected Under Fuel and Gas Adjustment Charges with Actual Cost; April 1992 and March 1993.

ICC Docket No. AB-1 (Sub-No. 230);; Chicago and North Western Transportation Company - Abandonment - Between Norfolk and Chadron, NE; January 1992.

**TESTIMONY AND PUBLICATIONS**

ICC Docket Nos. 37809 (Sub-No. 1) and 37815S; McCarty Farms, Inc., et al. vs. Burlington Northern, Inc.; November, 1986, August 1987, and October 1987, May 1988, May 1989, July 1989, December 1989 and July 1991.

ICC Docket No. 37038; Bituminous Coal, Hiawatha, Utah to Moapa, Nevada; and ICC Docket No. 37409; Aggregate Volume Rate on Coal, Acco, Utah to Moapa, Nevada; January 1985, March 1988, July 1990 and April 1991.

Railroad Accounting Principles Board; Staff Issue Paper on Reporting Costs and Outputs; June 1985.

Railroad Accounting Principles Board; Staff Issue Paper on Movement Parameters; May 1986. Virginia Department of Highways and Transportation, Rail and Public Transportation Division; Light Density Line Analysis Seaboard System Railroad, Suffolk to college Park, and South Suffolk to Nurney; September 1985.

Colorado Public Utilities Commission, Docket No. 6397; Colorado-Ute Electric Association vs. Denver & Rio Grande Western Railroad Company; June 1984.

ICC Docket No. AB6 (Sub-No. 175F), Burlington Northern Railroad Company Abandonment in Fergus, Judith Basin and Chouteau Counties, Montana; February 1984.

Ex Parte 431; Adoption of the Uniform Rail Costing System for Determining Variable Costs for Purposes of Surcharges and Jurisdictional Threshold Calculations; September 1983.

Co-authored Influence of Transportation Factors in the Site Selection of a United States Mazda Automobile Assembly Plant; September 1983.

Ex Parte 347 (Sub-No. 1); Coal Rate Guidelines - Nationwide; July 1983.

ICC Docket No. 38823; R. A. Williams, Inc. vs. Illinois Central Gulf Railroad Company; April 1983.

Montana Department of Commerce; Montana Rail Cost Data Base; December 1982.

ICC Docket No. 37626; Consolidated Papers, Inc. et al. vs. Chicago & Northwestern Transportation Company, et al.; April 1981, November 1981 and November 1991.

Ex Parte 411; Complaints Filed Under Section 229 of the Staggers Rail Act of 1980; October 1981.



**TESTIMONY AND PUBLICATIONS**

Railroad Commission of Texas, RCT Docket No. 024130ZZR; Switching and Minimum Carload Charges, Houston, Texas; October 1980.

Co-authored Influence on Transportation of U.S. Production of Toyota Motor Vehicles; April 1980.

Co-authored Foreign Agriculture Service, U.S.D.A.; Supplement No. 1, Ocean Liner Cargo Services; 1977.

**STATEMENT OF QUALIFICATIONS**

My name is Sean D. Nolan. I am Vice President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, VA 22314; 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737; and 21 Founders Way, Queensbury, New York 85737.

I received a Bachelor of Arts degree in Psychology with a minor in Economics from Bates College in 1988, and a Master of Business Administration degree from the University of Phoenix in 2006, specializing in managerial accounting. I first joined the firm of L. E. Peabody & Associates, Inc. in November 1989.

As part of my work for L. E. Peabody & Associates, Inc., I have performed and directed numerous projects and analyses undertaken on behalf of utility companies, trucking companies, major mailers, and industry and trade associations. Examples of studies which I have participated in organizing and presenting include the operational and cost analyses of truck and rail movements of coal and other commodities, traffic studies, the development and forecasting of rates and charges in competitive and non-competitive markets, and the analysis of service standards. I have also analyzed cost savings and the pass through to rates and charges from operational productivities achieved through work-sharing initiatives, investment in equipment and facilities, adjustments to traffic and operating characteristics including operating multiple car movements and unit train operations, and the impact of competitive alternatives on rates and charges. The nature of these studies enabled me to become familiar with the operating procedures utilized by railroads and the cost of service in the normal course of business.

**STATEMENT OF QUALIFICATIONS**

Since 1989, I have participated in the development of cost of service analyses for the movement of coal over the major eastern and western coal-hauling railroads and I have conducted on-site studies of switching, detention and line-haul activities relating to the handling of coal. I have also participated in several projects providing potential build-out opportunities as effective competition in utilities' fuel procurement initiatives. Procurement initiatives have included the purchasing of fuel, transportation services, equipment, and management of inventories. Alternative scenarios have been supported by tailored financial models developed to estimate cost reductions and savings, actual versus budgeted variances, revenue to variable cost of service relationships, cash flows, and break-even and sensitivity analysis.

In my tenure with L. E. Peabody & Associates, Inc., I have collected and analyzed information needed to efficiently calculate rail costs utilizing the Surface Transportation Board's ("STB") Uniform Railroad Costing System ("URCS") to determine the maximum rate a captive shipper should pay based on the STB's constrained market pricing principles, and have supported the development and presentation of traffic and revenue forecasts, operating expense forecasts, and discounted cash-flow models presented in proceedings before the STB.

In every major mail classification and rate design case since PRC Docket R90-1, I have analyzed and supported the restatement of evidence related to the development of proposed rates and fees presented by the United States Postal Service and various interveners. Evidence supported on behalf of major mailers included the quantification of costs realized through work-sharing initiatives and the advocacy of cost savings realized throughout the supply chain passed through as rate discounts.

**STATEMENT OF QUALIFICATIONS**

In addition I directly supported the Financial Resources Division of USAID's Office of Inspector General providing guidance and recommendations with respect to the agency's short term and long term goals. My customized financial models were integral in the justification and execution of the group's 2010-2012 budget presented to the Office of Management and Budget. The decision process was supported by the alternative budget scenarios developed based on the identification of fixed and variable costs, the prioritization of the group's initiatives, and the allocation of its human and capital resources.

**Determination of CSXT Rail Market Dominance  
CSXT Rail Margin, less Difference Between Rail Rate and Cost of Providing Alternative Service**

| Lane No<br>(1)                         | Origin<br>(2)   | Destination<br>(3) | Route<br>(4)           | Rail<br>Rate<br>(5) | Alternative<br>Rate<br>(6) | Rail<br>Cost<br>(7) | Alternative<br>Cost<br>(8) | Rail<br>Margin<br>col(5)-col(7)<br>(9) | Rail Rate<br>less Alt Cost<br>col(5)-col(8)<br>(10) | Rail Margin<br>less Alternative<br>col(9)-col(10)<br>(11) |
|----------------------------------------|-----------------|--------------------|------------------------|---------------------|----------------------------|---------------------|----------------------------|----------------------------------------|-----------------------------------------------------|-----------------------------------------------------------|
| <b>Alternative - Truck to Customer</b> |                 |                    |                        |                     |                            |                     |                            |                                        |                                                     |                                                           |
| 14b                                    | Apple Grove, WV | Franklin, IN       | CSXT-LOUVL-LIRC        |                     |                            |                     |                            |                                        |                                                     |                                                           |
| 4a                                     | Apple Grove, WV | Clifton Forge, VA  | CSXT Direct            |                     |                            |                     |                            |                                        |                                                     |                                                           |
| 8a                                     | Apple Grove, WV | Parkersburg, WV    | CSXT Direct            |                     |                            |                     |                            |                                        |                                                     |                                                           |
| 1a                                     | Apple Grove, WV | Belpre, OH         | CSXT Direct            |                     |                            |                     |                            |                                        |                                                     |                                                           |
| 35b                                    | Apple Grove, WV | Waynesville, NC    | CSXT-LYNCH-NS          |                     |                            |                     |                            |                                        |                                                     |                                                           |
| 20b                                    | Apple Grove, WV | Hebron, OH         | CSXT-CLMBO-CUOH        |                     |                            |                     |                            |                                        |                                                     |                                                           |
| 10a                                    | Apple Grove, WV | Rochester, NY      | CSXT Direct            |                     |                            |                     |                            |                                        |                                                     |                                                           |
| 14a                                    | Belpre, OH      | Devon, KY          | CSXT (CINTI-NS switch) |                     |                            |                     |                            |                                        |                                                     |                                                           |
| 39b                                    | Belpre, OH      | Franklin, IN       | CSXT-LOUVL-LIRC        |                     |                            |                     |                            |                                        |                                                     |                                                           |
| 5a                                     | Apple Grove, WV | Devon, KY          | CSXT (CINTI-NS switch) |                     |                            |                     |                            |                                        |                                                     |                                                           |
| 8b                                     | Apple Grove, WV | Allentown, PA      | CSXT-HAGTN-NS          |                     |                            |                     |                            |                                        |                                                     |                                                           |
| 18b                                    | Apple Grove, WV | Havre de Grace, MD | CSXT-HAGTN-NS          |                     |                            |                     |                            |                                        |                                                     |                                                           |

**Determination of CSXT Rail Market Dominance**  
**CSXT Rail Margin, less Difference Between Rail Rate and Cost of Providing Alternative Service**

| <u>Lane No.</u><br>(1)                               | <u>Origin</u><br>(2) | <u>Destination</u><br>(3) | <u>Route</u><br>(4) | <u>Rail<br/>Rate</u><br>(5) | <u>Alternative<br/>Rate</u><br>(6) | <u>Rail<br/>Cost</u><br>(7) | <u>Alternative<br/>Cost</u><br>(8) | <u>Rail<br/>Margin</u><br>col(5)-col(7)<br>(9) | <u>Rail Rate<br/>less Alt. Cost</u><br>col(5)-col(8)<br>(10) | <u>Rail Margin<br/>less Alternative</u><br>col(9)-col(10)<br>(11) |
|------------------------------------------------------|----------------------|---------------------------|---------------------|-----------------------------|------------------------------------|-----------------------------|------------------------------------|------------------------------------------------|--------------------------------------------------------------|-------------------------------------------------------------------|
| <b><u>Alternative - Truck to Transload on NS</u></b> |                      |                           |                     |                             |                                    |                             |                                    |                                                |                                                              |                                                                   |
| 8b                                                   | Apple Grove, WV      | Allentown, PA             | CSXT-HAGTN-NS       |                             |                                    |                             |                                    |                                                |                                                              |                                                                   |
| 18b                                                  | Apple Grove, WV      | Havre de Grace, MD        | CSXT-HAGTN-NS       |                             |                                    |                             |                                    |                                                |                                                              |                                                                   |
| 19b                                                  | Apple Grove, WV      | Hazleton, PA              | CSXT-HAGTN-NS       |                             |                                    |                             |                                    |                                                |                                                              |                                                                   |
| 37b                                                  | Belpre, OH           | Allentown, PA             | CSXT-HAGTN-NS       |                             |                                    |                             |                                    |                                                |                                                              |                                                                   |
| 15b                                                  | Apple Grove, WV      | Fremont, OH               | CSXT-CLMBO-NS       |                             |                                    |                             |                                    |                                                |                                                              |                                                                   |
| 24b                                                  | Apple Grove, WV      | Nicholasville, KY         | CSXT-CLMBO-NS       |                             |                                    |                             |                                    |                                                |                                                              |                                                                   |

**Determination of CSXT Rail Market Dominance**  
**CSXT Rail Margin, less Difference Between Rail Rate and Cost of Providing Alternative Service**

| <u>Lane No.</u><br>(1)                                             | <u>Origin</u><br>(2) | <u>Destination</u><br>(3) | <u>Route</u><br>(4)        | <u>Rail Rate</u><br>(5) | <u>Alternative Rate</u><br>(6) | <u>Rail Cost</u><br>(7) | <u>Alternative Cost</u><br>(8) | <u>Rail Margin</u><br><u>col(5)-col(7)</u><br>(9) | <u>Rail Rate less Alt. Cost</u><br><u>col(5)-col(8)</u><br>(10) | <u>Rail Margin less Alternative</u><br><u>col(9)-col(10)</u><br>(11) |
|--------------------------------------------------------------------|----------------------|---------------------------|----------------------------|-------------------------|--------------------------------|-------------------------|--------------------------------|---------------------------------------------------|-----------------------------------------------------------------|----------------------------------------------------------------------|
| <b><u>Alternative - Truck to Lima, OH then CFER to Chicago</u></b> |                      |                           |                            |                         |                                |                         |                                |                                                   |                                                                 |                                                                      |
| 21b                                                                | Apple Grove, WV      | Lenexa, KS                | CSXT-CHGO-BNSF             |                         |                                |                         |                                |                                                   |                                                                 |                                                                      |
| 30b                                                                | Apple Grove, WV      | Sweetwater, TX            | CSXT-CHGO-BNSF             |                         |                                |                         |                                |                                                   |                                                                 |                                                                      |
| 32b                                                                | Apple Grove, WV      | University Park, IL       | CSXT-CHGO-CN               |                         |                                |                         |                                |                                                   |                                                                 |                                                                      |
| 10b                                                                | Apple Grove, WV      | Champaign, IL             | CSXT-CHGO-CN               |                         |                                |                         |                                |                                                   |                                                                 |                                                                      |
| 22b                                                                | Apple Grove, WV      | Little Rock, AR           | CSXT-CHGO-BNSF (UP switch) |                         |                                |                         |                                |                                                   |                                                                 |                                                                      |
| 25b                                                                | Apple Grove, WV      | Rockford, IL              | CSXT-CHGO-CPRS             |                         |                                |                         |                                |                                                   |                                                                 |                                                                      |
| 16b                                                                | Apple Grove, WV      | Glendale, AZ              | CSXT-CHGO-BNSF             |                         |                                |                         |                                |                                                   |                                                                 |                                                                      |
| 34b                                                                | Apple Grove, WV      | West Chicago, IL          | CSXT-CHGO-UP               |                         |                                |                         |                                |                                                   |                                                                 |                                                                      |
| 7b                                                                 | Apple Grove, WV      | Agua, AZ                  | CSXT-CHGO-BNSF             |                         |                                |                         |                                |                                                   |                                                                 |                                                                      |
| 9b                                                                 | Apple Grove, WV      | Altamira, TM              | CSXT-CHGO-BNSF-EAGPA-FXE   |                         |                                |                         |                                |                                                   |                                                                 |                                                                      |
| 26b                                                                | Apple Grove, WV      | Rogers, MN                | CSXT-CHGO-BNSF             |                         |                                |                         |                                |                                                   |                                                                 |                                                                      |
| 33b                                                                | Apple Grove, WV      | Vado, NM                  | CSXT-CHGO-BNSF             |                         |                                |                         |                                |                                                   |                                                                 |                                                                      |

**Determination of CSKT Rail Market Dominance  
CSKT Rail Margin, less Difference Between Rail Rate and Cost of Providing Alternative Service**

| <u>Lane No.</u><br>(1)                                                    | <u>Origin</u><br>(2) | <u>Destination</u><br>(3) | <u>Route</u><br>(4)                 | <u>Rail<br/>Rate</u><br>(5) | <u>Alternative<br/>Rate</u><br>(6) | <u>Rail<br/>Cost</u><br>(7) | <u>Alternative<br/>Cost</u><br>(8) | <u>Rail<br/>Margin</u><br>col(5)-col(7)<br>(9) | <u>Rail Rate<br/>less Alt. Cost</u><br>col(5)-col(8)<br>(10) | <u>Rail Margin<br/>less Alternative<br/>Cost</u><br>col(9)-col(10)<br>(11) |
|---------------------------------------------------------------------------|----------------------|---------------------------|-------------------------------------|-----------------------------|------------------------------------|-----------------------------|------------------------------------|------------------------------------------------|--------------------------------------------------------------|----------------------------------------------------------------------------|
| <b>Alternative - CFER from Chicago to Lima, OH then Truck to Customer</b> |                      |                           |                                     |                             |                                    |                             |                                    |                                                |                                                              |                                                                            |
| 3b                                                                        | Altamira, TM         | Cambriage, OH             | FXE-EAGPA-BNSF-CHGO-CSXT-CLMBO-CUOH |                             |                                    |                             |                                    |                                                |                                                              |                                                                            |
| 2b                                                                        | Altamira, TM         | Belpre, OH                | FXE-EAGPA-BNSF-CHGO-CSXT            |                             |                                    |                             |                                    |                                                |                                                              |                                                                            |
| 1b                                                                        | Altamira, TM         | Apple Grove, WV           | FXE-EAGPA-BNSF-CHGO-CSXT            |                             |                                    |                             |                                    |                                                |                                                              |                                                                            |
| 48b                                                                       | Sweetwater, TX       | Apple Grove, WV           | BNSF-CHGO-CSXT                      |                             |                                    |                             |                                    |                                                |                                                              |                                                                            |



**Correction of Errors and Miscalculations  
to the Verified Statement of Gordon R. Heisler**

The verified statement of Gordon R. Heisler supporting CSXT's January 27, 2011 Motion for Expedited Determination of Jurisdiction Over Challenged Rates contains numerous errors and miscalculations. Each of these errors is addressed in this Exhibit and a corrected version of Mr. Heisler's electronic workpaper titled "CSX M&G Challenge Competitive Lane.xls" is included in our workpapers.

Mr. Heisler alleges that 32 of the 70 issue origin/destination pairs have feasible and economically viable competitive alternatives. Mr. Heisler claims the rates that would be charged for the alternative service for 12 of the 32 origin/destination pairs would be lower than the CSXT rates at issue, with the rates on the remaining origin/destination pairs being slightly higher than the CSXT rates at issue in this proceeding.

**A. Fuel Surcharge Calculations**

Mr. Heisler makes three errors in the calculation of fuel surcharges.

**1. CSXT Fourth Quarter 2010 Fuel Surcharge**

Mr. Heisler adds a fuel surcharge to the existing CSXT rates based on the fuel surcharge in effect on January 1, 2011 of \$0.29 per loaded mile, yet he claims that his analysis is at 4Q2010 levels. The correct fuel surcharge to be used for a 4Q2010 analysis is the CSXT fuel surcharges that are in effect during the quarter, i.e. an average of the October, November and December 2010 fuel surcharges. This average is equal to \$0.25 per loaded car mile.

**Correction of Errors and Miscalculations  
to the Verified Statement of Gordon R. Heisler**

**2. Calculation of Bulkmatic Transport Company Fuel Surcharge**

Mr. Heisler makes two errors in calculating the fuel surcharge for certain of the competitive alternatives using Bulkmatic Transport Company ("Bulkmatic"). These errors are in spite of the fact that for many of the competitive alternatives using Bulkmatic, Mr. Heisler's fuel surcharge calculation is correct. The first Bulkmatic fuel surcharge error is simply a mathematical calculation error for the Belpre, OH to Devon, KY lane and for the Altamira, TM to Cambridge, OH lane. According to Mr. Heisler's workpapers, the Bulkmatic fuel surcharge is [REDACTED] per mile, however, for these two lanes the fuel surcharge is [REDACTED] and [REDACTED] per mile, respectively.

The second, and more significant error in calculating the Bulkmatic fuel surcharge is for the Apple Grove to Franklin, IN and the Apple Grove to Devon, KY lanes. In both of these instances, Mr. Heisler failed to multiply the fuel surcharge amount by a factor of four when calculating the railcar equivalent cost. Mr. Heisler correctly multiplied the Bulkmatic fuel surcharge amount by a factor of four in the 24 remaining alternatives using Bulkmatic.

**A. Trailer Cleaning Charges**

Mr. Heisler overstated the trailer cleaning charges for the two alternative lanes where R&J Trucking Company is used. These are the Apple Grove to Clifton Forge, VA and Apple Grove to Waynesville, NC lanes. According to Mr. Heisler's workpapers R&J Trucking's cleaning cost per trailer is [REDACTED]. The amount included in Mr. Heisler's cost per railcar equivalent for R&J Trucking's cleaning charge is [REDACTED] or [REDACTED] times four truckloads per

**Correction of Errors and Miscalculations  
to the Verified Statement of Gordon R. Heisler**

railcar. However, as cleaning is required [REDACTED] (or when a change in the commodity hauled occurs), the [REDACTED] per railcar equivalent should be divided by [REDACTED] to yield [REDACTED] per railcar equivalent.<sup>1</sup>

**B. Transfer Facility Fees at Columbus, OH**

Mr. Hesler includes a Transfer Facility Fee of [REDACTED] per railcar for shipments moving through NS' Thoroughbred Bulk Transfer facility in Columbus, OH. However, Mr. Heisler's workpapers for the Columbus, OH TBT facility include a copy of the NS tariff governing this transload facility. NS tariff Item 112 specifies a transfer facility fee of \$75 per truckload for self-loading or unloading trailers which equals \$300 per railcar equivalent. In addition, the labor cost equals [REDACTED] per truckload for an additional [REDACTED] per railcar equivalent or a total of [REDACTED] per railcar. This amount is consistent with the handwritten notes on the front of the NS tariff and other notes contained in Mr. Heisler's workpapers,

**C. NS Rate for Shipments Originating the Utility  
Supply Company's St. James, MD Transload Facility**

Mr. Heisler incorrectly assumes that NS will move a railcar of M&G's PET which originates at the St. James transload facility to destination for the same rate that it would move a railcar it receives in interchange from CSXT at Hagerstown. However, Mr. Heisler admits that the NS Rule 11 rate that applies to railcars received from CSXT at Hagerstown would not cover rates from the Utility Supply facility. Mr. Heisler states that in his experience, it is *extremely*

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<sup>1</sup> If Mr. Heisler is assuming that R&J would be hauling different commodities than PET and therefore a trailer cleaning is required for each truckload his calculations are correct.

**Correction of Errors and Miscalculations  
to the Verified Statement of Gordon R. Heisler**

*likely* that M&G would be able to secure the same or a very similar contract rate for railcars originating at a transload facility located just 1.5 miles away from Vardo.<sup>2</sup>

The fact is, however, that NS is not willing to provide M&G with the same rate for cars originating at Utility Supply Company in St. James. NS has provided a quote for moving railcars from the Utility Supply Company in St. James equal to [REDACTED] more per carload than its existing rate for moving M&G's PET from interchange with CSXT in Hagerstown. Mr. Heisler's conclusion that the truck transload/NS rate for moving M&G's PET via the Hagerstown transload is less than the existing rail rate is incorrect and understates the rate that would be charged for the alternative movement.

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<sup>2</sup> Hesler VS at p. 12, note 8. (Emphasis added). Mr. Hesler indicates that Utility Supply Company's transload facility is located in Hagerstown, MD where the existing interchange between CSXT and NS takes place. In actuality Utility Supply Company is located six miles south of Hagerstown in St. James, MD.